Supreme Court, U.S.
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In The Supreme Court of the United States

ROSE MARIE S. SPANAGEL,
individually and as personal representative
of the Estate of Robert J. Spanagel,

Petitioners,

v.

SUPPORTIVE CARE SERVICE, INC.,

Respondent.

On Petition for Writ of Certiorari
to the Delaware Supreme Court

PETITION FOR WRIT OF CERTIORARI

Rose Marie S. Spanagel
5132 Paw Paw Point
Cambridge, MD 21613
(410) 228-9009

Pro se

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

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QUESTION PRESENTED FOR REVIEW

Did the Supreme Court of the State of Delaware commit reversible error when it affirmed the Delaware Court of Chancery's entry of a default judgment against Petitioner, when Respondent's attorney later admits that he committed a fraud on the Court when he certified that he had personally served Petitioners a copy of the Complaint according to Court rules and now admits to perjury?

LIST OF PARTIES TO PROCEEDINGS BELOW

The parties to the proceedings before the Delaware Supreme Court are the following:

Rose Marie S. Spanagel – Defendant – Appellant
Robert J. Spanagel – Defendant – Appellant
*Deceased

Support Care Service, Inc.,
Guardian July 7, 1995 to March 12, 1996.
Aline G. Brugmann
**Deceased

John H. Williams, Jr. – Plaintiff – Appellee
Not legal entity to this proceeding.
Illegal appointment made by Register of Wills, March 7, 1997. VOID.

* February 2, 2001
** March 12, 1996

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OPINIONS BELOW

The order 12-7-01 of the Supreme Court for the State of Delaware dismissing the Petitioners' appeal is not reported, but is set forth in the Appendix beginning at A-1. The order 11-7-01 of the Delaware Supreme Court denying the Petitioners' motion for rehearing en Banc is not reported, but is set forth in the Appendix beginning at A-3. The order of the Court of Chancery, filed March 4, 1996, is not reported, but is set forth in the Appendix beginning at A-14. The order of the Court of Chancery for the State of Delaware, filed April 19, 1999 is not reported, but is set forth in the Appendix beginning at A-9. The order of the Court of Chancery for the State of Delaware filed April 27, 1999, is not reported, but is set forth in Appendix beginning at A- .

STATEMENT OF JURISDICTION

The order of the Delaware Supreme Court dismissing the Petitioners' appeal was entered November 7, 2001. The order of the Delaware Supreme Court denying the Petitioners' motion for rehearing en Banc entered December 7, 2001 (A-3). This Court has jurisdiction to review the order of the Court of Appeals by writ of certiorari under 28 U.S.C. Section 1257 (a).

CONSTITIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 1257(a) provides as follows:

> (a) This case does include final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question, or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

This petition concerns fraud on the court, and fraud in the court by no less than six attorneys, Joseph F. Flickinger III, Register of Wills, and Jack B. Jacobs, Vice Chancellor, both acting under color. This case was preceded by two separate law suits filed by Forward Manor against Robert J. and Rose Marie Spanagel in 1985. Mr. Spanagel requested their resident, Aline G. Brugmann's medical records July, August, September and October 1994, to transfer her from Delaware to Maryland to be close to our home. Because they did not cooperate, his request was made the next year March, April and May, 1995, Forward Manor responded by filing two lawsuits. One in Chancery Court, another in Superior Court the same time. In 1900, 1920, 1943, three babies were born. Sadly, the first two have died (Aline & Bob) since this case was filed, August 18, 1995. The first Chancery Court case, presided by Vice Chancellor, Jack B. Jacobs, resulted in the appointment of Supportive Care Services, Inc., as Guardian July 7, 1995, regardless of the eight mistakes; including hearing a petition with only one physician statement. Their Ward died March 12, 1996, age 95, and their authority was terminated. There never was a legitimate party, appointed under law, as successor plaintiff. Petitioners attorneys fawned the court rather than Motion the court that Register of Wills Joseph F. Flickinger III straw man appointment of John H. Williams, Jr. was void. The plot was no mistake. Case CA No. 14488, has been crawling through the Court of Chancery, Delaware's non-jury trial court of equity, all these years and plundered our house and personal property therein, because Vice Chancellor Jack B. Jacobs refused to open the default judgment after he signed an "Order to Show Cause" March 4, 1986, changed to a "default judgment". We were told

by our first lawyer, Richard S. Phillips the court lacked jurisdiction and proper service. Attempts to have the default lifted by our fifth lawyer were met with an Order from Vice Chancellor Jacobs threatening sanctions with an award of counsel fees to the plaintiff. All efforts failed to have the case judged on its merits, so we appealed to the Delaware Supreme Court October 31, 2000. Since appeal was denied a "Motion For Rehearing *En Banc*" was filed November 26, 2001; also denied.

The "Order To Show Cause" signed by Vice Chancellor Jacobs December 22, 1995 relied on statements made by David Ferry's letter dated December 21, 1995, (Docket #10, Clocked 4:09 p.m., 12-21-95). In David Ferry's Supreme Court Appellee's Answering Brief, August 13, 2001, page 19 B., he finally confesses service was not properly perfected under 10 Del. C. 3104. To secure his precarious default judgment, plaintiffs' attorney, David J. Ferry, Jr., provided the court with a sworn AFFIDAVIT, September 16, 1999, stating the facts set forth in his December 21, 1995 letter to Vice Chancellor Jack B. Jacobs, are true and correct. The AFFIDAVIT was perjured, and now David Ferry admits to his perjury. The petitioner alerted Vice Chancellor Jacobs to Ferry's misrepresentations by letter December 14, 1995, (Docket #9) and subsequent letter dated January 17, 1996, (Docket #13). Petitioner also advised the court in the last letter my husband was legally blind from post-operative eye infections and provided medical documentation. Due to his blind condition, he was not capable of handling his personal affairs and incompetent to deal with this litigation. Vice Chancellor Jacobs and the attorneys ignored this completely. Petitioner's husband, Robert J. Spanagel, died February 2, 2001, age 80 and held a Durable

Power of Attorney from his life long friend, Mrs. Brugmann. They met the year he was born, and there was no interruption in their concern or caring for each other until death separated them. Mrs. Brugmann would never file a claim like this. *It was filed by her Guardian who never knew her at the time an epidemic of lawsuits concerning the elderly were popular, corresponding to the epidemic of law suits in California concerning child care organizations.* David J. Ferry, Jr., attorney for the plaintiff, has distorted the record, falsified information, misrepresented and committed perjury. Vice Chancellor Jacobs' opinions have supported his perjury throughout, and wrongfully engaged in conspiracy undermining the court records spoiling supportive documentation necessary for defense.

When we were represented by counsel, there were three occasions when the Plaintiffs and Defendants lawyers (*on the same days using the exact same methods*) filed via fax, U.S. mail, and hand delivered records to the Register in Chancery. The plaintiff's records were docketed; the defendant's records were not, and went missing. Collusion on the court, and in the court with the willful destruction of our supportive court records subverted any possibility of justice. Initially, we were without representation, due to my husband's hospitalization August, September and October, 1995, and post-operative infection resulting in blindness. Documents supportive to our side, provided by our lawyers, were not docketed, and now absent from the record, along with many documents filed *pro se*.

Aline and Bob's relation was more than substantial. In his 12-20-99 court testimony, he commented that he received more letters from Aline during the war than his own mother and

wife combined, *yet court opinions state "his relationship is questionable and insubstantial".* Aline's was a young girl when her Father died in the hen house and her Mother was killed in an auto accident. She was cared for by my husband's grandparents, and his Mother (Frances Margaret Jones Spanagel) and Aline grew up as sisters.

Around 1964, Aline and Elmer Brugmann bought their first and only house, *3403 Rockfield Drive, South, Devon, Wilmington, DE* , the same house this litigation concerns. For more than 20 years, her husband did the household chores, including cooking and chauffeuring so Aline could teach children piano at home. Aline's was devastated when illness struck her husband, not only from witnessing the way Elmer was restrained to the bed by the hospital and nursing home, but, she could no longer earn income at $9 to $11 per lesson, from her piano students. She was supported by Mr. and Mrs. Robert J. Spanagel, Elmer's niece and her husband from Virginia Beach, (Bette and Col. "Slim" Collings) and a nephew in Louisiana.

After her husband's death (May 22, 1986) she quickly explored with various professionals some way to prevent her admission to a nursing home. She wanted to stay in her house, teach children, and needed help to do this. Her life long friend, Bob Spanagel, supported her house/care plan, and in return was given "Durable Power of Attorney" June 6, 1986. This verbal agreement was put in writing Thanksgiving, 1987. Her signature was witnessed by her doctor; but, the court rejected this since Bob was not in the room when Aline signed it; therefore, the courts opinion was, *"he did not witness her signature, and the document was not proved."*

Prior to her signing the deed when she sold her house for $125,000 to us June 18, 1987, she visited with no less than 4 attorneys, *yet Vice Chancellor Jacobs' many opinions state "she was without representation at the sale".* Her personal attorney, Darrell J. Baker, and attorneys Timothy Collins, Sherryl Rush-Milstead, and Henry A. Heiman were present, with two witnesses; William Frampton and Orysia K. Meyers. Aline knew Mr. Heiman years before, from teaching his daughter piano. In addition to the legal professionals, she sought advice from her medical professionals before and after she signed the deed; *yet the continued court opinions state "she had no counsel, was not paid fair consideration, and Bob transferred the house to us illegally.*

After her husband died, Aline continued to enjoy the security of her former house, with all her needs met pursuant to her 1986 verbal agreement until 1991, when she wanted to move to an assisted living apartment at Forward Manor. She could meet the physical requirements for admission, but, not the financial requirements of $150,000, due to insufficient funds. At her request, Mr. Spanagel, prepared a balloon financial report to get her over the hump, and she signed herself in. The inflated figures were $71,000 under their column "Notes Due You" and $450 in Monthly Income Real Estate. The rest of the numbers he ball parked to show $152,000 total assets and $1,560 total monthly income. Forward Manor's Admissions Director, Mary Denney did not question the numbers, and wrote on the application, "Applicant will use up funds in 4 years". She moved into her new apartment April, 17, 1991, *yet the court opinions state "the Spanagels put her in a nursing home, and commenced to rent her house".* Our house was empty and undergoing repairs and renovations, per Aline and

Bob's agreement The house was never rented until after Mrs. Brugmann died 1996. If Bob Spanagel was the person of character Plaintiff wanted the court to believe he could have sold our house after she moved out in April 1991 and gone back on his word of promise to her.

In July 1994, Mr. Spanagel asked Forward Manor for Aline's records so she could be transferred to Maryland. Another request was made in writing August 19, 1994 and included comment, "funds are running low." No acknowledgment was made of this or another letter he sent to Gail Derdorf, office manager, Forward Manor, September 7, 1994. On another visit, October 1994, Mary Denny, admissions director, Forward Manor told Bob she felt Aline would not live through the weekend, and confirmed by the doctor. Arrangements to transfer Mrs. Brugmann were canceled when the house was listed For Sale October 1994. Transfer plans were reactivated 1995 with medical records requested again in writing March 13, 1995 sent via fax, and again in person March 14, 1995. This time the request was met with hostility from Russell A. Di Gilio, Executive Director, Forward Manor, who concluded, "this would not be resolved unless we contact our lawyer". Two more faxes were sent to Russell Di Gilio May 10 and May 11, 1995. Then a personal visit to Forward Manor May 12, 1995 at 7:45 p.m. to pick up the records from the R. N. on duty as Mr. Spanagel was advised to do. No records were provided. The final letter asked for all records up to and including May 15, and was delivered to Forward Manor May 13, 1995. Forward Manor responded by filing *two lawsuits* against Robert J. and Rose Marie Spanagel filed as: *1) A Petition for Guardianship CM 7533 in Chancery Court and 2) Civil Action No. 95C-05-102 filed in Superior Court.*

On June 26, 1995, Mrs. Brugmann's niece, Bette Collings, Virginia Beach, VA, received a certified letter informing her the court had scheduled a hearing June 30, 1995. Unfortunately, Bette's reply letter was addressed, *"Jack B. Jacobs"*, and the salutation read, *"Dear Mr. Jacobs";* therefore, no consideration was made whatsoever to her desires. The court received her letter June 29, 1995, clocked 12:20, Docket #7. On short notice, and without counsel, Mr. and Mrs. Spanagel appeared pro se, hopeful the court could help obtain Mrs. Brugmann's medical records; however, Supportive Care Services was appointed Guardian.

On July 7, 1995, the court ordered SCS to provide an accounting within 30 days, *yet many times the court opinion states, " the Spanagels refused to obey a court order that directed them to provide an accounting".* We had no knowledge of this order, because the court never mailed it to us, nor were we the one directed to provide the accounting. The order directed the Court Appointed Guardian, SCS, to provide the accounting within 30 days from the order's date. (July 7, 1995) Supportive Care Services did not write to us until July 27, 1995 (twenty days after the signed order) and never specified a deadline. Their July 25, 1995 letter merely stated, "soon as possible". On August 18, 1995, SCS initiated this litigation and changed the situation.

Now, the other case Forward Manor filed in Superior Court through their attorney, Helen Richards, came to our attention. We hired Darrell J. Baker, Esquire, by telephone July 24, 1995, seeking representation. Mr. Baker said that as Mrs. Brugmann's attorney in the past, there may be conflict. He agreed to represent us only in Superior Court since we were in

New York because my husband's son, was scheduled for open-heart surgery July 25, 1995 at Crouse-Irving Hospital, Syracuse, NY. Mr. Baker filed a counter-claim answer August 4, 1995 for Superior Court CA No. 95C-05-102. Judge William Quillen dismissed the case since Forward Manor failed to prosecute.

On August 23, 1995, settlement was scheduled for the house in Wilmington. The Spanagels could not be in Wilmington since Rose Marie Spanagel was admitted that day to the Emergency Department, Dorchester General Hospital, Cambridge, MD. August 24, 1995, Robert J. Spanagel was at Johns Hopkins Hospital, Baltimore, MD, with Dr. Patrick Walsh. On August 25, 1995, Mr. Spanagel was admitted to the Emergency Department, Dorchester General Hospital for gross hemituria. He was hospitalized through August 27, 1995, subsequently transferred to Johns Hopkins with September surgery and discharged October 3, 1995. The summons for this Chancery Court litigation was returned to David Ferry four days before we got home. He never did a second mailing, choosing instead to write misleading letters to Vice Chancellor Jacobs seeking a default judgment. Many of his letters stated; *"the Spanagels were served with the complaint and service was made under 10 Del.C. 3104 ."* Because this was not true, Petitioner wrote V. C. Jacobs, December 14, 1995, Docket #9 and again January 17, 1996, Docket #13 alerting him of this and our health problems David Ferry knew about from Darrell Baker. Petitioners January 17, 1996 letter put the court on notice of my husband's post operative eye infections causing blindness and provided medical documentation. Mr. Spanagel was legally blind and incapable of attending to his personal business and incompetent in every respect. The information was in the record for anyone to see; however, all five attorneys we

hired for our defense in Chancery Court remained silent. David Ferry wrote the Delaware Supreme Court, *" this is an insult to every person who is blind."* The default was decided without regard to a blind incompetent person. Vice Chancellor Jacobs, signed the "Order To Show Cause", a default judgment, (Docket #17 clocked 11:56 AM, March 4, 1996) without the benefit of the complete file, and relying on his memory 46 days before that was the last activity on this case. (January 17, 1996, Docket #13).

On Friday afternoon, March 1, 1996, David Ferry quickly wrote a letter to Vice Chancellor Jacobs after he learned our first lawyer, Dick Phillips was answering the complaint. Many mistakes were made in this hasty letter. There was no "Motion" included, yet the *"Order to Show Cause* states; having considered the plaintiffs Motion." Vice Chancellor Jacobs violated his own policy signing this order by not first forwarding it to the defendants. It was a default judgment mislabeled, as "Order to Show Cause" due to Ferry's urgency.

Without question, David Ferry committed a fraud on the court when he wrote, *"It is clear the Spanagels have no intention of answering this complaint."* This was no mistake. He already knew our lawyer would be filing the answer Monday, March 4, 1996. Petitioner did not receive a copy of the complaint until February 12, 1996; 179 days after it was filed. No summons was included since the courier was not court appointed. Friday, March 1, 1996 we met with our first attorney, Richard S. Phillips, and gave him a $2,000 retainer. Mr. Phillips told us, *"the complaint was not filed timely, and lacked jurisdiction; but, might as well go answer it, because*

the Plaintiff could re-file through Publication, and get it right the second time".

In Petitioners presence, he placed a call to plaintiff's attorney, David J. Ferry, Jr., and told him, " I represent the Spanagels, and I'm filing an answer on Monday, March 4, 1996." Mr. Phillips told us to stop by his office Monday morning to pick up the paperwork then file it with the court, and buy copies of the complete court records and docket for his use. As we passed the receptionist after our meeting, a call came in from David Ferry for Dick Philips.- In court Monday afternoon, March 4, 1996, the last entry was Docket #13, our January 17, 1996 letter to Vice Chancellor Jacobs. The Register in Chancery, Priscilla B. Rakestraw, had the file and docket sheets duplicated for us, and since nothing further was received by the court since my January 17, 1996 letter, Docket #13, I was informed the answer I filed would be Docket #14.

Ken Lagowski, Office Manager, and the Register in Chancery, Priscilla B. Rakestraw made a thorough effort on the afternoon of March 4, 1996, to insure I had copies of the complete record by checking with every employee to see if they were holding any documents for CA 14488 and be certain the complete file was duplicated. Petitioner even asked if someone was still out to lunch, and had documents on their desk. Her reply was, "not a chance." But, our next visit to the court showed the record now reveals, unbeknownst to the Register and Office Manager, someone clocked an "Order to Show Cause" 11:56 a.m., March 4, 1996; yet this Order to Show Cause could not be found anywhere in the Register's office, and no one employed there had any knowledge how it could have been clocked in at 11:56 a.m. March 4, 1996. It was

assigned Docket #17, proof that it was not in the court when I filed our "Answer" at 1:17 PM, Docket #15, March 4, 1996.

An understanding of Docket #17 is important as it is the default judgment. The clocking machines used by the Chancery Court at that time, are described as follows: 1) All the clocks in use, had manual dials so date and time could be changed as required. Some were also placed in unsecured locations. Anybody (authorized or unauthorized) having knowledge, could adjust the dials and get whatever reading they wanted. Therefore, whatever date is stamped on Docket #17 (3/4/96 11:56 a.m.) the "default judgment mislabeled Order to Show Cause", as well as Ferry's letter clocked in after hours, and lacking a "Motion" (Docket #14 3/1/96 4:33 PM) are fraudulent. Even the court clerk lists Docket #17 as an "Order to Show Cause" on their Docket Sheet. There is no beginning of certainty, clarification, opinion or any other judicial writing establishing how or why the court could have ruled the default. Notification was never made by the court to the defendant, nor did the court offer a hearing on the "Motion for Default Judgment" because there was no Motion to offer a hearing on. It didn't exist with the March 1, 1996 letter. It was not attached to David Ferry's rushed letter dated March 1, 1996.

Complicating matters further, the elected official; The Register in Chancery, could not protect and preserve the public's interest. There were too many ways someone could circumvent the only authority the citizens of Delaware have empowered by their vote, or a non-resident could be guaranteed that was fair and unbiased, when forced to participate in litigation. When Vice Chancellor Jacobs' signed an "Order to Show Cause", with the affirmation; "having carefully

considered the Plaintiff's Motion for a default judgment" on March 4, 1996, he should have known the March 1, 1996 letter in front of him was deficient. There was no Motion attached. Because of health problems, we were *pro se* August 18, 1995, the date the complaint was filed, until March 1, 1996, when we hired our first attorney. Unfortunately, our attorney, Dick Phillips and plaintiff's attorney, David Ferry both came to the court with "dirty hands". Regrettably, I did not learn this until after my husband's death. The petitioners chronic frustrations to be heard on this fraud in the court was made more difficult by Register of Wills Joseph F. Flickinger III, acting under color, who opened an estate with a photocopy of a will, not proved; and codicil lacking date for witness signatures, also not proved. The Register of Wills never held a hearing to establish a valid legal appointment for successor plaintiff, nor did Vice Chancellor Jacobs hold a hearing to approve the Register's straw man appointee. It was a plot promulgated by past bias, prejudice and disrespect of the law. Notices were never made since hearings were never held. Mr. Flickinger's appointment of John H. Williams, Jr. always was and remains void. Vice Chancellor Jacobs, under color, did not and could not sign a Motion for Substitution filed April 16, 1997, extremely out-of-time more than 365 days after death, because it would be illegitimate and unlawful. The Court Appointed Guardian Supportive Care Service's authority was terminated March 12, 1996, including the lawsuit CA 14488 filed August 18, 1995,

and default judgment made March 4, 1996. No legal authority was established thereafter because my husband's petition for representation, as specified in Mrs. Brugmann's will, was arbitrarily dismissed. The lawyers hired by Robert J. and Rose Marie Spanagel did not protect their interest.

Mr. Spanagel had profound sensorineural hearing loss with poor speech discrimination at his December 20, 1999 testimony, documented in the transcript. Everyone in the court was aware of the problem with the chronic whistle of his aids and their removal. An easy target for abuse, he was not offered or provided help in direct violation of the American with Disabilities Act. The court never wanted to hear from the petitioner, who could hear and rebut the mistakes in the record from the beginning of this prolonged court case.

The same judicial discretion that prevented the Petitioners from testifying at the March 26, 1999 hearing, also prevented the Petitioners from entering the accounting at the hearing on August 20, 1998, that lasted almost two hours, while Petitioners were told to wait outside the court room. We brought to the court two large boxes of accounting records, and the new accounting format lawyers required us to use just days before the hearing. Petitioners devoted more than 100 hours to reformat. Not one of the lawyers looked at the new accounting, and we were refused entry to the court room. We were told that we should be glad the Vice Chancellor didn't want to see us. The accounting was available at the beginning in a "tablet format", 1995, 1996, 1997 and 1988. The new format was specifically required for the hearing on August 20, 1998 and after all the work, no body was interested in it. For the March 26, 1999 hearing, it was reformatted once again, but not entered in the record. By preventing Mr. Spanagel's testimony until December 20, 1999, when the accounting went through its 4th reformat to Microsoft Excel, the court had the opportunity to plunder our house and personal property therein. Petitioners first lawyer, Dick Phillips, was hired because the petitioner was

the only one who received 5 photocopies of the complaint February 12, 1996. Vice Chancellor Jacobs' opinions state: *"the defendants were served with the complaint, and service perfected under 10 Del. C 3104."* This is simply not true. Not until August 13, 2001, was it admitted in David Ferry's Answering Brief, Delaware Supreme Court, Case No.523,2000,Page19 B, MERITS OF THE ARGUMENT that *"Service was not properly perfected under 10 Del. C. 3104"*.

We were forced to participate because lawyers appeared in court with dirty hands and refused to put on their "belt of truth" doing the business of the court. Even today, March 2002, The Honorable Court exists as defined by the word, "prestigious" in Webster's New World Dictionary "full of deceitful tricks, delusion, 1.[Archaic] characterized by legerdemain or deception" Duplicity is egregious throughout the record with the date documents are clocked "Received.... ". The Chancery Court still uses several clocks with manual dials. Because this sitution revolves around who controls the high ground, controls the situation, I pray morals and ethics will be supreme in deciding this case. Last year, Delaware's legislature made changes; Delaware, the only state in the nation where the voters do not have the right to vote on constitutional amendments, now presented the judiciary with power to eliminate the people's elected representative, The Register in Chancery. The position is filled through appointment by the judiciary . . . perhaps, appropriate for the "Blue Hen State" to have the fox guard the hen house.

ARGUMENT

A. Scope and Standard of Review

The standard and scope of review in the present case, is whether the Fourteenth Amendment allows a trial court and the Delaware Supreme Court to turn its back on attorney misconduct and reward such misconduct with the enforcement of a void default judgment entered against Petitioners because of a fraudulent assertion by Respondent's attorney that personal service had been made upon Petitioners, according to trial court rules. See R."Roy" Peralta v. Heights Medical Center, Inc., 485 U.S. 80 (1988) This fraudulent assertion was later admitted in Respondent's Answering Brief filed with the Supreme Court for the State of Delaware . Ironically, no where in its opinion does the Delaware Supreme Court address the service issue or fraud upon the Court.

To make matters worse, Respondent's attorney was representing a non entity during the enforcement of this default judgment, as no Order was entered for substitution of parties after Respondent's death. See Ex Parte La Prade, 289 U.S. 444 (1933); William Kasting v. American Family Mutual Insurance Company, et al., 196 F.R.D. 595 (2000) . Respondent's attorney had no jurisdiction to substitute a new Respondent as a party or to continue a law suit against Petitioners. Without question, Petitioners were unjustly denied a hearing on the issue of a liability. Consequently, all of the actions regarding the enforcement of the default judgment were void.

State procedures for enforcing judgments and liens are always subject to the strictures of due process. See supra, R."Roy" Peralta v. Heights Medical Center, Inc., 485 U.S. 80 . A fundamental requirement in any proceeding is notice reasonably calculated to interested parties and an opportunity to present objections. See Id. B. MERITS

Fraudulent conduct on the part of Respondent's attorney should not be tolerated by any Court. See G. Russell Chambers v. Nasco, Inc., 501 U. S. 32 (1991). The minimum sanction for fraud on the Court should be the reversal of the entry of the default judgment in the present case. However, not only did the Delaware Supreme Court refuse to address Respondent's fraudulent assertions of personal service, it condoned such action with the entry and affirmation of the default judgment. Even the Delaware Supreme Court permitted a violation of the Rule 8.4 of Professional Rules of Conduct which specifically provides that : It is professional misconduct for a lawyer to ...engage in conduct involving dishonesty, fraud, deceit or misrepresentation ..... "Mr. Ferry sign an affidavit swearing that he had served the Petitioners according to the Court rules, only to later admit that he lied and did not follow Court rules in an answering brief to the Supreme Court. However, this admission has come too late, two lives have been literally destroyed by this unlawful conduct on the part of Mr. Ferry.

Petitioners Spanagels never had an opportunity for a hearing before the Court seeking relief from default. Under the trial court's interpretation of the service and default statutes,

Petitioners Spanagels aver that they have been denied due process of law under the Fourteenth Amendment to the

United States Constitution because Petitioner was not afforded actual notice and an opportunity to be heard when respondent took their house and worldly possessions. The Supreme Court has held that "Failure to give notice violates 'the most rudimentary demands of due process of law." See R."Roy" Peralta v. Heights Medical Center, Inc., 485 U.S. 80 (1988) (citations omitted). In Peralta, despite a return showing "personal service," the defendant denied he had ever been personally served. This Court held that the default judgment against him could not stand because "[A] judgment entered without notice or service is constitutionally infirm." Id.

In the present case, the Court's own evidence in the record demonstrates that the certified mail envelope containing the complaint was never received by the Spanagels (no signed return receipt) or delivered to the address on file with the Court. When Respondent's attorney acted upon the default judgment the Court he knew that the envelope containing the complaint had never been delivered to Petitioners. When the default decision was made, there was no real proof of service by personal service or by registered or certified mail as required by the trial court rules.

The answering brief filed by respondent's attorney in the Delaware Supreme Court admits that Petitioners Spanagels were never personally served, and neither Mr. or Mrs. Spanagel nor any one else signed for a copy of the complaint. Due process under the Fourteenth Amendment of the United States Constitution therefore required that the court below set aside the Default Decision of the Court of Chancery for failure to effect service upon petitioners Spanagels which was reasonably calculated to apprise them of the proceedings at which their property may be taken.

Mullane v. Central Hanover Bank, 330 U.S. 306 (1950) has long stood for the proposition that a person's property may not be taken without due process and that a fundamental requisite of such process is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of proceedings which could result in a deprivation of property so as to afford them an opportunity to be heard. Mullane further held that "when notice is a person's due, process which is a mere gesture is not due process." Id. at 315. In the case at bar, respondent's attorney knew that the envelope giving Complaint was not claimed by the Spanagels, and that the petitioners did not receive it according to Court rules. Therefore, the notice given in this case was such a "mere gesture", and not done according to the rules. Additionally, the "mere jester" was kept under cover, until Respondent's admission of deceit after the Spanagel's property had been wrongfully taken away. A "mere jester" cost Mr. Spanagel his life, and lead his wife into a life of poverty and depression.

In Sinclair and Valentine Co. v. County of LA, 201 Cal. App. 3d 1021 (1988), a California Court of Appeal found such a "mere gesture" under Mullane where the County of Los Angeles mailed a notice of sale at public auction ". . . with full knowledge that such notice would be undeliverable as addressed." In this case, when the envelope was addressed to the wrong place, respondent's attorney similarly had full knowledge that notice had never been given to petitioners Spanagels. To sustain a default judgment taking away the house of Petitioners and their savings when Respondent's attorney knew that its Complaint had never reached the Spanagels is the paradigm violation of Mullane principles.

Under the Due Process Clause of the Fourteenth Amendment, notice means "actual notice," not notice mailed but undelivered. In Tulsa Professional Collection Services v. Pope, 485 U.S. 478 (1988), this Court held that, even in complex probate matters, ". . . requirement of actual notice to known or reasonably ascertainable creditors is not so cumbersome as to unduly hinder the dispatch with which probate proceedings are conducted."

Petitioners Spanagels asserts that the Court's entry of a default decision violated due process when the Court acted on a certified mail receipt which conclusively demonstrated that the Complaint had been mailed to the wrong address and that the Spanagels did not receive the Complaint.

In Wise v. Herzog, 114 F.2d 486 (D.C. Cir. 1940), the Court has held that due process is not satisfied, even though a statute and court rule permitted service by registered mail, when the receipts were returned "unclaimed" or "refused."

Mullane is the cornerstone of due process in the United States. This Court should grant certiorari so that its important teachings are not willfully ignored by the Court of Chancery and the Delaware Supreme Court as they have done in the present case. Even though there was an admission of fraud, nether Court sought further evidence or requested a hearing to determine the extent of the misrepresentations. To the contrary, the Courts used any excuse they could find to uphold the default judgment. It would have been politically unpopular to do otherwise, and give the Spanagels a fair hearing on the issue of liability.

Furthermore, not even taking into account the equities of the present case, Appellant Spanagel asserts that the Court never had jurisdiction over her or Robert J. Spanagel. Because the Defendants are not residents of the state of Delaware, Plaintiff was required to use a form of substitute service upon Defendants. Plaintiffs then attempted to do so under the statutory authority of 10 Del. C. §3104. However, Plaintiff failed in its attempt in that it registered mail serviced or sent to the wrong address.

The Delaware Supreme Court has noted the safeguards embodied in the statute for the protection of non-resident defendants and support the doctrine that although the non-resident defendant statute is procedural in form, it is to be regarded as a statute affecting substantive light. See Monacelli v. Grimes, Del. Supr., 99 A.2d 255, 266 (1953). However, these safeguards were abandoned when it came to the Spanagels.

A judgment is void if entered after improper service of process. Both the Court of Chancery and the Delaware Supreme Court knew that the judgment was void, but abandoned justice for the politically correct thing. They would take pride in prosecuting the Spanagels in a civil court where application of rules was a rare event and make the Spanagels another example in a time period where other persons thought to have taken advantage of elderly people were made spectacles of.

"The failure to follow this procedure justifies dismissal. Purnell v. Dodman, Del. Super., 297 A.2d 391 (1972)." Caffon v. Matt Slap Subaru, Inc., Del. Super. 1998 W.L. 77761, Martin, J. (1988).

The statutory requirements for sending notice under §3104(d) represent a strict jurisdictional requirement. Greenly v. Davis, Del. Super., 486 A.2d 669 (1984). The requirements are that the plaintiff is to serve process with the Secretary of State. After a return of process is filed, the plaintiff has seven (7) days to send notification by registered mail to the non-resident defendant. In addition, the plaintiff is to amend the complaint pursuant to Rule 4(h) which proves to the Court that the defendant was served with process.

The second jurisdictional requirement intentionally not met by the Respondent's attorney was notification of defendant by registered mail. Any type of actual notification does not satisfy the statutory notice requirement. Swift v. Leasure, Del. Super., 258 A.2d 428 (1971).

In the present case, Respondent's attorney knew what he was doing when he refused to follow the statutory procedure of sending notification to the non-resident defendant by registered mail at Spanagel's correct address. Casson v. Matt Slap Subaru, Inc., Del. Super. 1988 W.L. 77761, Martin, J. (1988).

A second course is mandated by statute in the event of non-receipt of the notice. In this situation it is assumed that the Respondent's attorney has already complied with the first mailing required by §3112(b), i.e. the mailing which follows the return of service on the Secretary of State. Once the plaintiff becomes aware that his initial notice has not been received he may elect to prove non-receipt by filing a §3112(e) affidavit, but subjects himself to the alternate procedure set forth in §3112(b) which requires the sending of a notice to the

defendant. Respondent's attorney willfully ignored even this rule.

"Not later than seven days following ... the filing with the Court of the proof of the non-receipt of notice provided for in subsection (e) of this section..."

This seven day period is statutory and not subject to enlargement by rule of Court. Thus, in a non-receipt situation the plaintiff is actually required to make two mailings to the defendant in order to effectuate his jurisdictional notice. Purnell v. Dodman, Del. Super., 297 A.2d 391, 395 (1972).

The Delaware Supreme Court has specifically held that where a statute required notice to be sent to a protected party's address, the party sending the notice would lose its rights under the statute, if the notice is sent to the wrong address. Friendly Finance Corp. v. Bovee, Del. Supr., 702 A.2d 1225, 1228 (1997). This same Court has in essence reversed this just ruling, by allowing Mr. Ferry to commit fraudulent conduct upon the Court, in order to obtain a default judgment.

Mr. Ferry thought and still thinks he is above the law, and need not follow fundamental Court rules. Even though no substitution of party order was sign after the death of his client, the Court permitted him to continue to represent a non entity. In effect, Mr. Ferry had no standing to be representing or suing anyone and engaged in a conspiracy when he entered his appearance February 23, 1999, Docket 40, almost one year after the death of his client's ward. Unfortunately, two Courts have already sanctioned his conduct.

In the present case, the alternate ways in which Mr. Ferry served defendant is legally irrelevant in complying with the protection the defendants' constitutional rights to due process of law pursuant to Delaware's statute. The statutory notice is required to be sent by registered mail within seven days of the return of service by the Sheriff to Register in Chancery. In the case at bar, respondent's attorney intentionally and willfully sent the Complaint to the wrong address. None of the notices alleged to have been sent by Respondent's attorney were done in the manner prescribed by statute or during the time permitted under the statute. This admission came after the death of Robert J. Spanagel and after the Spanagels had lost their worldly possessions at the hands of an unethical and calculating attorney.

Respondent's attorney asserted that he sent the notice by law in an envelope, his letter dated August 19, 1995 to the Spanagels. That envelope only had $.32 postage, which would have been insufficient to include the notice to a non-resident, the complaint and summons as well as the notice of lis pendens. This notice preceded the sheriff's return of service, so it could not have had the notice to a non-resident, and it was not within the time frame permitted by statute.

This same devious attorney represented that he had sent notice to an attorney who had represented Appellant Spanagel in another lawsuit. This same unethical attorney made no attempt to demonstrate that attorney had the authority to accept legal process on behalf of the defendants. Contrary to this, plaintiff had stated that the attorney directed plaintiff's counsel to fax the notice directly to the defendants. However, defendants do not have a fax machine on which to receive the

complaint. Regardless, this notice procedure was not statutorily permitted by manner nor time.

About six months after the above-mentioned faxed notice, Mr. Ferry had a courier hand delivery a copy of the complaint to the Spanagel's Cambridge, Maryland address. This occurred even though this attempt was long after the time period prescribed by statute, and is not a listed statutory means for service. Consequently, the lower court never had jurisdiction over the Petitioners.

The lower court also erred when it entered an order to sell Spanagel's real estate before the Spanagels had presented all their evidence at the inquisition hearing. After the first hearing March 26, 1999 where the court only took testimony from Respondent only, the lower court also erred when it entered an order to sell Spanagel's real estate. Testimony from Robert J. Spanagel only was heard for the first time six months later, December 20, 1999.

The Spanagels were set up for failure when, in addition to willful misrepresentations by Respondent's counsel, crucial records and documents are missing from the Court's file. A note , which was made part of the record from the Vice Chancellor's secretary sums it all up-- "do not docket". A conscious decision was made by the Court to not docket the Spanagel's evidence and responses. This decision, along with the fraud on the Court, costs the Spanagels everything dear to them.

Unlike previous cases where no just determination could be made without a new trial because of missing documents, the Court in the case at bar ignored the fundamental concept that

you must have a full and complete record before any decision is reached regarding substantive rights. See Wayne Watson v. State of Delaware, 781 A.2d 596 (Del. Supr. 1999); J. Barclay Brothers v. William Lawton , 40 A.935 (Del. Super. 1893); Byrnia v. Town of Cromwell Bd., 243 F.3d 93 (2001).

Fraud on the Court, incomplete record, and the incompetency of Petitioners at the time of the filing of the default judgment made it impossible for Petitioners to rightfully defend false accusations, and protect their constitutional right to a fair trial. In essence , the Spanagel were treated like dogs , with no humanly rights recognized on their behalf by anyone, including the Court. The Court 's condoning of Ferry's wrongful conduct makes the Court just as responsible for the Spanagel's plight, if not more so , because of the Court's unique position . The effect was having the trial Court conspire with Ferry to destroy the Spanagels' name . The grant of the default judgment on the part of the Court was a calculated move to cover up Ferry's wilful actions. This calculated move was a violation of the Canon of Judicial Ethics No. 3 which governs judges. Canon 3 requires a judge to be "faithful to the law and maintain professional competence". Joseph B. P. v. Kathleen M. P., 469 A2d 800 (1983); Walsh v. Hotel Corporation of America, 231 A.2d 458 (1967); Cheryl Taylor v. William Taylor, 1995 Del. Fam. Ct. Lexis 45 (1995). See T. Bradford Zimlerski v. State Farm Automobile Ins. Co., 1987 Del. Super. LEXIS 1291 (1987) (Ferry was closely involved with a Judge in this case, as well).

Ferry's criminal like conduct, in stealing the Spanagels'wordly possessions with false accusations, should have caused the Court to immediately find that Ferry had no right to pursue any case against the Spanagels . See However, just the opposite was held--- the Spanagels had no rights .

All these facts lead to one conclusion. The Court of Chancery and Delaware Supreme Court turned their backs to fundamental rule violations and fraudulent conduct, when they permitted a default judgment to stand, and likewise turned their backs on justice for the Spanagels. The U.S. Supreme Court is the Spanagels' only hope for justice. Mr. Spanagel's spirit will not rest until his wife's good name and his good name are restored and cleared.

CONCLUSION

In our judicial system there is no more fundamental error than elevating form over substance as a means of denying a party access to the courts. That is what has happened in this case. The trial court granted a default judgment and the Delaware Supreme Court affirmed, because false statements were made by respondent's attorney that personal service had been made on Petitioners according to the Chancery Court rules. Yet instead of adhering to the letter and spirit of service rules, the courts below refused to address – or even acknowledge - the merits of the Petitioners' claims to that they were not served. Such failure is antithetical to the very notion of the grant of discretion to the lower courts. This Court should grant Petitioners' writ and redress this abuse of discretion and fundamental court error.

Wherefore, the Petitioners respectfully request that a writ of certiorari issue to the Supreme Court for the state of Delaware for the purpose of bringing before this Court for full briefing and review the order dismissing the Petitioner's appeal.

Respectfully submitted,

Rose Marie S. Spanagel
5132 Paw Paw Point
Cambridge, MD 21613
(410) 228-9009

No. _____

In The Supreme Court of the United States

ROSE MARIE S. SPANAGEL, individually and as personal representative of the Estate of Robert J. Spanagel,

Petitioners,

v.

SUPPORTIVE CARE SERVICE, INC.,

Respondent.

On Petition for Writ of Certiorari to the Delaware Supreme Court

APPENDIX

Rose Marie S. Spanagel
5132 Paw Paw Point
Cambridge, MD 21613
(410) 228-9009

Pro se

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOHN H. WILLIAMS, JR., ADMINISTRATOR WITH THE WILL ANNEXED OF THE ESTATE OF ALINE G. BRUGMANN	)
Plaintiff,	) C.A. No. No.14488-NC
v.	)
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)
Defendants.	)

AFFIDAVIT

STATE OF DELAWARE :

SS.

NEW CASTLE COUNTY :

DAVID J. FERRY, JR., ESQUIRE, being duly sworn, did depose and state as follows:

1. He is counsel to the plaintiff in this action.

2. The facts set forth in his letter to Vice Chancellor

Jack B. Jacobs dated December 21, 1995, a copy of which is attached as Exhibit "C" to defendants' Motion for Relief from Judgments and incorporated herein by reference, are true and correct.

3. On December 21, 1995, the original of that letter along with all attachments thereto was delivered to Vice Chancellor Jacobs by hand, and a copy was filed with the Register in Chancery.

/s/
DAVID J. FERRY, JR.

SWORN TO AND SUBSCRIBED before me this 16th day of September, 1999.

/s/
Notary Public

FERRY, JOSEPH & FINK, P.A.
ATTORNEYS AT LAW
824 MARKET STREET
SUITE 904
PO BOX 1351
WILMINGTON DELAWARE 19899

(302) 575-1555

David J. Ferry, Jr.
Michael B. Joseph
Kenneth E. Fink
Theordore J. Tacconelli
John D. Mattey

TELEFAX
(302) 575-1714

December 21, 1995

VIA HAND DELIVERY

The Honorable Jack B. Jacobs
Court of Chancery
Daniel L. Herrmann Courthouse
1020 N. King Street
Wilmington, DE 19801

RE: Supportive Care Services, Inc. v. Spanagel
C.A. No. 14488

Dear Vice Chancellor Jacobs:

The Court's Order of November 15, 1995 directed the defendants to answer the Complaint or show cause as to why they have not answered the Complaint by December 15, 1995. The defendants have not been in contact with me regarding this matter, but I learned from checking the Court file that a letter was sent to Your Honor by the defendants on or about

December 14, 1995 indicating that it was impossible for them to answer the Complaint because they did not have it in their possession.

I am writing to renew my request for a default judgment in this matter. I respectfully submit that the defendants are not being truthful with the Court and are clearly engaging in dilatory tactics.

The defendants' letter to Your Honor dated December 14, 1995 indicates that they do not have a copy of the Complaint. The following is a summary of the efforts and notice provided to the defendants regarding the Complaint:

1. This suit was filed on August 18, 1995 and seeks an accounting and an imposition of a constructive trust on assets wrongfully appropriated from Aline Brugmann. At the time, the defendants were dealing with a real estate agent at Prudential Preferred Properties in connection with the plans to sell the former residence of Aline Brugmann and they were represented in a related Superior Court action by Darrell Baker, Esquire. Settlement of the real estate was scheduled to be held on August 23, 1995, and a lis pendens was filed in the office of the Recorder of Deeds.

2. A copy of the Complaint was sent by me to Mr. and Mrs. Spanagel on August 19, 1995 by regular first class mail. A copy of my letter to the defendants is attached as Exhibit "A". This letter was not returned to my office and, therefore, is presumed to have been received by the defendants.

3. I contacted the real estate agent by phone on August 18, 1995 to inform him of the filing of the law suit and I personally delivered to his office a copy of the letter to the Spanagels on August 19, 1995.

4. On August 22, 1995, I was contacted by Darrell Baker as counsel for the Spanagels. At his request, I provided him with a copy of the Complaint and confirmed arrangements to allow the real estate settlement to proceed with funds to be held in escrow pursuant to an escrow agreement. I also confirmed that the defendants were going to provide accounting information that they had been ordered to provide by a prior Order of the Court of Chancery. A copy of my letter to Mr. Baker is attached as Exhibit "B".

5. Although they had indicated they would appear at settlement, the Spanagels failed to appear at settlement on August 23, 1995. I am informed that they refused to appear at settlement because of the pending Chancery Court suit. A copy of my letter to Mr. Baker dated August 23, 1995 confirming that the Spanagels did not appear at settlement and did not provide accounting documents is attached as Exhibit "C".

6. Darrell Baker requested my secretary to forward a copy of the Complaint directly to the Spanagels by fax transmission on August 24, 1995. The Complaint was faxed to the Spanagels on that date. A copy of the fax transmission sheet is attached hereto as Exhibit "D". A copy of the confirmation of the receipt of the fax is attached hereto as Exhibit "E".

7. The Spanagels were informed of the filing of lis pendens declaration by my letter of August 25, 1995. A copy of that letter is attached hereto as Exhibit "F'. This letter was not returned by the post office.

8. Registered mail letters were sent to Mr. and Mrs. Spanagel on September 15, 1995 along with a copy of the Complaint and Summons as required by 10 Del.C. § 3104. Copies of the letter to Mr. and Mrs. Spanagel are attached hereto as Exhibit "G". The Spanagels did not claim the registered letters that were sent to them. Copies of the envelopes returned to my office as "Unclaimed" are attached hereto as Exhibit "H".

9. A Motion for Default Judgment was filed and copies were sent directly to the Spanagels by first class mail on October 23, 1995. This mailing was also not returned to my office and, therefore, is presumed to have been received by the defendants.

10. My letter to Your Honor dated November 6, 1995 forwarding a copy of the Motion for Default Judgment was copied to the defendants. This letter also was not returned to my office and is, therefore, presumed to have been received.

11. My letter of November 15, 1995 to Your Honor forwarding a form of an Order to Show Cause was also copied to the defendants. This letter was not returned to my office and is, therefore, presumed to have been received.

12. The defendants' letter to Your Honor dated December 14, 1995 acknowledges that the Order to Show

Cause was received by them. That Order clearly indicates that defendants must show cause as to why they have failed to answer the Complaint and/or file an answer to the Complaint by December 15, 1995 to avoid default judgment.

In addition to the above, this Court's Order of July 11, 1995 directed Mr. Spanagel to provide a written explanation of his management of Aline Brugmann's assets to her guardian. The Spanagels have also ignored that Order and have failed to file any accounting information despite repeated requests for same.

The Spanagels' letter to Your Honor dated December 14, 1995 indicates that 5132 Paw Paw Lane, Cambridge, Maryland 21613 is an incorrect address. However, the real estate contract that they signed on June 27, 1995 to sell the former home of Mrs. Brugmann indicates that their address for purposes of any notices if 5132 Paw Paw Point, Cambridge, Maryland 21613.

Despite any health problems that the defendants may have, they have been given an extensive amount of time to respond to the Complaint and to respond to the prior Court Order of July 11, 1995. They have been represented by counsel and they clearly have seen a copy of the Complaint despite their representations to the contrary in the letter of December 14, 1995. The December 14, 1995 letter is obviously a delay tactic. Plaintiff requests that default judgment be entered and that the matter be scheduled for a hearing to determine the appropriate relief and damages due to the plaintiff.

If the Court has any questions, I would be pleased to answer them.

Respectfully,

DAVID J. FERRY, JR.

DJFjr/jbd
Enclosures

Cc: Nicholas R. Bischoff, Esquire
Thomas J. Pomatko, Esquire
Darrell J. Baker, Esquire
Mr. and Mrs. Robert J. Spanagel
Register in Chancery

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROSE MARIE SPANAGEL, individually and as personal representative of the estate of Robert J. Spanagel, deceased	§	
Defendants Below, Appellants,	§	No. 523, 2000
vs.	§	Court Below – Court of Chancery of the State of Delaware, in and for New Castle County C.A. No. 14488-NC
JOHN H. WILLIAMS, JR., administrator with the will annexed of the estate of Aline G. Brugmann, deceased, Plaintiff Below, Appellee	§	

APPELLEE'S ANSWERING BRIEF

FERRY & JOSEPH, P.A.
DAVID J. FERRY, JR.
RICK S. MILLER
824 Market Street, Suite 904
P.O. Box 1351
Wilmington, DE 19899
(302) 575-1555
Attorneys for the Plaintiff Below,
Appellee

Dated: August 13, 2001

CERTIFICATE OF SERVICE

I, Rick S. Miller, Esquire, hereby certify that on this 13th day of August, 2001, I caused two (2) copies of the foregoing Appellee's Answering Brief to be served, via first class mail, upon the following:

Caroline P. Ayres, Esquire
503 West Ninth Street
P.O. Box 85
Wilmington, DE 19899

Rick S. Miller, Esquire
(Bar I.D. No. #3418)

MANDATE SUPREME COURT OF THE STATE OF DELAWARE

TO: Court of Chancery of the State of Delaware in and for New Castle County:

GREETINGS:

WHEREAS, in the case of:

JOHN H. WILLIAMS, JR., ADMINISTRATOR WITH THE WILL ANNEXED OF THE ESTATE OF ALINE G. BRUGMANN

v.

ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL

C.A. No. 14488

certain judgments or orders were entered on the 4th day of March, 1996, the 9th day of April 1999, the 27th day of April 1999, the 21st day of September 1999, the 26th day of July 2000, the 14th day of September 2000, the 2nd day of October 2000, and the 12th day of October 2000, to which reference is hereby made; and WHEREAS, by appropriate proceedings the judgments or orders were duly appealed to this Court, and after consideration have been finally determined, as appears from the

Orders dated November 7, 2001 and December 7, 2001, certified copies of which are attached hereto;

ON CONSIDERATION WHEREOF IT IS ORDERED AND ADJUDGED that the orders or judgments and are hereby affirmed.

Audrey F. Bacino
Assistant Clerk of the Supreme

Issued: December 10, 2001
Supreme Court No. 532, 2000

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROSE MARIE SPANAGEL, individually and as personal representative of the estate of Robert J. Spanagel,	§	
Defendants Below, Appellants,	§	No. 523, 2000
v.	§	Court Below – Court of Chancery of the State of Delaware, in and for New Castle County C.A. No. 14488-NC
JOHN H. WILLIAMS, JR., administrator with the will annexed of the estate of Aline G. Brugmann, deceased,	§	
Plaintiff Below, Appellee	§	

Submitted: November 26 2001

Decided: December 7, 2001

Before VEASEY Chief Justice, WALSH, HOLLAND, BERGER and STEELE, Justices (constituting the Court en Banc).

This 6th day of December 2001, the Court having carefully considered the appellant's "Motion for Rehearing en

Banc" of the order issued by this Court on November 7, 2001, and it appearing that same should be denied;

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOHN H. WILLIAMS, JR., ADMINISTRATOR WITH THE WILL ANNEXED OF THE ESTATE OF ALINE G. BRUGMANN	)	
	)	C.A. No. No.14488-NC
Plaintiff,	)	
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

ORDER

AND NOW, to wit, this 2nd day of October, 2000, for the reasons set forth in this Court's Memorandum Opinion dated September 14, 2000 in this matter,

IT IS HEREBY ORDERED as follows:

1. A surcharge is hereby imposed, and judgment is hereby entered against the defendants, jointly and severally, in favor of the plaintiff, in the principal amount of $42,033.27

($36,033.27 for rent and $6,000.00 for other unaccounted for funds). Prejudgment and post-judgment interest is awarded on this sum at the legal rate.

2. The plaintiff's request for the taxation of its counsel fees against defendant Robert J. Spanagel's share of the estate is denied. The plaintiff's counsel fees and litigation expenses shall be paid from the estate in such amount as the Court approves upon application.

3. The defendants shall pay the plaintiff's Court costs.

4. The proceeds of the sale of the decedent's real estate shall be used to pay estate expenses, including the plaintiff's aforementioned counsel fees and litigation expenses, with the balance to be distributed to the beneficiaries.

/s/

Vice Chancellor Jack B. Jacobs

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT SPANAGEL AND ROSE MARIE SPANAGEL	§	
	§	No. 532, 2000

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT SPANAGEL AND ROSE MARIE SPANAGEL	§	
	§	No. 532, 2000
Defendants Below Appellants,	§	
	§	Court Below – Court of
v.	§	Chancery of the State of
	§	Delaware, in and for New
JOHN H. WILLIAMS, JR.,	§	Castle County
administrator with the will	§	C.A. No. 14488-NC
annexed of the estate of	§	
Aline G. Brugmann,	§	
deceased,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted; October 10, 2001

Decided: November 7, 2001

Before VEASEY, Chief Justice, WALSH and HOLLAND, Justices.

ORDER

This 7th day of November 2001, it appears to the Court that:

1) This is an appeal from a final judgment entered by the Court of Chancery. These proceedings were filed on August 18, 1995 by Supportive Care Services, Inc., as guardian of the property of Aline G. Brugmann ("Mrs. Brugmann"). Mrs. Brugmann died on March 12, 1996. Mrs. Brugmann's death resulted in the substitution of John H. Williams, Jr., the administrator of Mrs. Brugmann's estate, as the party plaintiff ("plaintiff').

2) The complaint asked for accounting from Robert J. and Rose Marie Spanagel ("defendants") and for the imposition of a constructive trust against certain real property that Mrs. Brugmann had transferred to the defendants.

3) A default judgment was entered against the defendants by the Court of Chancery on March 4, 1996. The defendants moved to set aside the default judgment on May 1, 1996. That motion was denied by an Order dated May 14, 1996.

4) The Court of Chancery held an inquisition hearing on March 27, 1999 to determine the damages and other relief due to the plaintiff. The defendants appeared at the March hearing. The Court of Chancery heard testimony from the plaintiff. It then continued the hearing to a later date to enable the parties to develop a pretrial order.

5) The Court of Chancery also asked the parties to submit letter memoranda to address the effect of the default judgment that had been entered against the defendants with regard to the issues pending in the inquisition. The plaintiff

submitted a memorandum with the Court of Chancery. The defendants did not submit their own memorandum.

6) On April 9, 1999, the Court of Chancery issued an Order granting the specific equitable relief prayed for in the complaint a constructive trust against the real property known as 3403 South Rockfield Drive, Wilmington, Delaware. In the April 9, 1999 Order, the Court of Chancery ordered the defendants to execute a corrective deed transferring the property to the plaintiff.

7) The defendants did not comply with the Court of Chancery's April 9, 1999 Order. The plaintiffs filed a motion for performance by substitute. The defendants did not oppose the motion. The motion was granted by the Court of Chancery on April 27, 1999.

8) On September 13, 1999, the defendant filed another motion to vacate the default judgment. On September 21, 1999, the Court of Chancery again denied the motion.

9) The inquisition hearing reconvened on December 20, 1999. The defendants were afforded the opportunity to present their case. The Court of Chancery ordered post-trial briefing and further oral argument at the conclusion of the briefing.

10) The Court of Chancery issued its Memorandum Opinion on September 14, 2000. In its Opinion, the Court of Chancery granted most of the substantive relief sought by the plaintiff. A form of Order implementing the Memorandum Opinion was signed and entered. The defendants filed this appeal.

11) In this appeal, the appellants challenge the Court of Chancery's decision not to set aside the default judgment that was entered in 1996. We have concluded that the motion to set aside the default judgment was properly denied by the Court of Chancery, for the reasons stated in its September 21, 1999 Letter Opinion. We have also concluded that the final judgment entered by the Court of Chancery should be affirmed for the reasons stated in its September 14, 2000 Memorandum Opinion.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgments of the Court of Chancery are affirmed.

BY THE COURT:

"NOT SIGNED"

Justice

IN THE COURT OF CHANCERY OF THE STATE OF

DELAWARE
IN AND FOR NEW CASTLE COUNTY

JOHN H. WILLIAMS, JR., administrator with the will annexed of the estate of Aline G. Brugmann,	)	
Plaintiff,	)	
	)	C.A. No. 14488-NC
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

ORDER

AND NOW, to wit, this 21st day of September, 1999, upon consideration of Defendants' Motion for Relief from Judgment and Plaintiff's Response thereto,

IT IS HEREBY ORDERED:

1. The Motion is DENIED.

2. Unless specifically authorized to do so by the Court,

the defendants shall not file any further motions or other papers with the Court seeking to vacate or set aside this Court's Order of March 4, 1996, granting default judgment in favor of the plaintiff.

Violation of this Order shall be considered sanctionable conduct and may lead, without limitation, to an award of counsel fees to the plaintiff for the cost of responding thereto.

/s/

Vice Chancellor Jack B. Jacobs

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOHN H. WILLIAMS, JR., ADMINISTRATOR WITH THE WILL ANNEXED OF THE ESTATE OF ALINE G. BRUGMANN	)	
Plaintiff,	)	C.A. No. No.14488-NC
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

ORDER

AND NOW, TO-WIT, this 20th day of June, 2000, the Court having considered plaintiff's motion to cancel the lis pendens filed by the defendants in this action, and the Court having concluded that (1) plaintiff has provided sufficient security and (2) defendants have failed to show a probability that final judgment will be entered by this Court in their favor,

IT IS ORDERED as follows:

1. The Recorder of Deeds is hereby directed to cancel the lis pendens filed by the defendants against the property known as 3403 S. Rockfield Drive, Wilmington, DE.

2. Plaintiff may immediately file a copy of this Order with the Recorder of Deeds, with any filing costs to be paid by the defendants.

/s/

Vice Chancellor Jack B. Jacobs

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

JOHN H. WILLIAMS, JR., ADMINISTRATOR WITH THE WILL ANNEXED OF THE ESTATE OF ALINE G. BRUGMANN,	)	
Plaintiff,	)	
	)	C.A. No. 14488-NC
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

ORDER

AND NOW, TO—WIT, this 27th day of April, 1999, the foreoing Motion for Performance by Substitute having been presented to and considered by the Court,

IT IS ORDERED AS FOLLOWS:

1. The motion for Order of Performance by Substitute is hereby granted.

2. The Court directs and authorizes Diane Kempski, Register in Chancery, to sign the deed and transfer tax affidavits prepared by plaintiff's counsel to transfer title to the real estate at 3403 S. Rockfield Drive, Wilmington, Delaware to the

plaintiff pursuant to the Court's Order of April 9, 1999.

/s/

Chancellor

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

JOHN H. WILLIAMS, JR., ADMINISTRATOR WITH THE WILL ANNEXED OF THE ESTATE OF ALINE G. BRUGMANN	)	
Plaintiff,	)	C.A. No. No.14488-NC
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

ORDER

AND NOW, TO-WIT, this 9th day of April, 1999, the Court having considered plaintiff's memorandum of law concerning the effect of the default judgment entered by this Court,

IT IS ORDERED that the Deed signed by Aline G. Brugmann on or about June 18, 1987, purporting to transfer the real property known as 3403 South Rockfield Drive,

Wilmington, Delaware, and recorded in the office of the Recorder of Deeds, in and for New Castle County, in Deed Record Book 588, Page 347, is hereby declared null and void. Robert J. Spanagel and Rose Marie Spanagel shall, within ten (10) days of the date of this Order, effectively reverse the June 18, 1987 Deed by filing a corrective deed with the office of the Recorder of Deeds, in and for New Castle County, which will re-vest title to the property in the name of Aline G. Brugmann.

/s/

Vice Chancellor

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SUPPORTIVE CARE SERVICES, INC., GUARDIAN OF ALINE G. BRUGMANN,	)	
Plaintiff,	)	
	)	C.A. No. 14488
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

AND NOW, TO-WIT, this ____ day of _____ , 1997, the Motion for Substitution having been presented to and considered by the Court,

IT IS ORDERED AS FOLLOWS:

1. The Motion for Substitution is hereby granted;

2. John H. Williams, Jr., Administrator with will annexed of the estate of Aline G. Brugmann is hereby substituted as plaintiff and the caption of the case shall hereafter be titled: "John H. Williams, Administrator with Will Annexed of the Estate of Aline G. Brugmann, Plaintiff, v. Robert Spanagel and Rose Marie Spanagel, Defendents."

"NOT SIGNED OR DATED"

Chancellor

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SUPPORTIVE CARE SERVICES, INC., GUARDIAN OF ALINE G. BRUGMANN,	)	
Plaintiff,	)	
	)	C.A. No. 14488
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

ORDER TO SHOW CAUSE

AND NOW, TO—WIT, this 4th day of March, 1996, the Court having considered the plaintiff's Motion for Default Judgment and in light of defendants' failure to file an Answer to the Complaint on or before January 19, 1996 as required by this Court's Order of December 22, 1995,

IT IS ORDERED as follows:

1. Default judgment is hereby entered in favor of the plaintiff and against the defendants, Robert J. Spanagel and Rose Marie Spanagel, jointly and severally.

2. An inquisition hearing shall be held for the

purpose of determining the appropriate relief and damages due to the plaintiff.

/s/

V.C. J.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SUPPORTIVE CARE SERVICES, INC., GUARDIAN OF ALINE G. BRUGMANN,	)	
Plaintiff,	)	
	)	C.A. No. 14488
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

ORDER TO SHOW CAUSE

AND NOW, TO—WIT, this 22 day of December, 1995, the Court having considered the defendant's correspondence dated December 14, 1995 and the response of Plaintiff's counsel dated December 21, 1995,

IT IS HEREBY ORDERED as follows:

1. The defendants shall show cause in writing to why they have failed to answer the plaintiff's Complaint and file an Answer to the Complaint on or before January 19, 1995 or judgment shall be entered by default in favor of the plaintiff.

2. A copy of this Order shall be sent by regular mail to the defendants at the address provided by the defendants,

Paw Paw Point, Rt. 4, Cambridge, Maryland 21613.

/s/

The Honorable Jack B. Jacobs

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

SUPPORTIVE CARE SERVICES, INC., GUARDIAN OF ALINE G. BRUGMANN,	)	
Plaintiff,	)	
	)	C.A. No. 14488
v.	)	
ROBERT J. SPANAGEL and ROSE MARIE SPANAGEL,	)	
Defendants.	)	

ORDER TO SHOW CAUSE

AND NOW, TO-WIT, this 15th day of November, 1995, the plaintiff's Motion for Default Judgment having been presented to and considered by the Court,

IT IS HEREBY ORDERED as follows:

1. The defendants, Robert J. Spanagel and Rose Marie Spanagel shall show cause as to why they have failed to answer the plaintiff's Complaint and/or shall file an Answer to the Complaint on or before December 15, 1995 or judgment shall be entered by default in favor of the plaintiff.

2. A copy of this Order shall be sent by regular mail by the Register in Chancery to the defendants at their last

known address, 5132 Paw Paw Lane, Cambridge, Maryland 21613.

/s/

V.C. J.

Dated:

Supreme Court U.S.
FILED
APR 17 2002
OFFICE OF THE CLERK

No. 01-1379

In The

Supreme Court of the United States

ROSE MARIE S. SPANAGEL, individually and as personal representative of the Estate of Robert J. Spanagel,

Petitioner,

v.

SUPPORTIVE CARE SERVICES, INC.,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Delaware

RESPONDENT'S BRIEF IN OPPOSITION

DAVID J. FERRY, JR.
Counsel of Record
ROBERT K. PEARCE
FERRY, JOSEPH & PEARCE, P.A.
824 Market Street, Suite 904
P.O. Box 1351
Wilmington, DE 19899-1351
(302) 575-1555

Attorneys for Respondent Supportive Care Services, Inc.

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Respondents disagree with the question presented by the Petitioner. The proper question presented is whether the Delaware Supreme Court committed reversible error when it affirmed a ruling of the trial court granting, and then refusing to vacate, a default judgment against the Petitioner and her late husband.

Respondents contest the Petitioner's assertion that the Respondents' counsel committed a fraud upon the Court or that he admitted to perjury. Those allegations are completely false and unsupported by the record.

PARTIES TO THE PROCEEDINGS AND STATEMENT PURSUANT TO RULE 29.6

The Petitioner identifies John H. Williams, Jr., Esquire ("Mr. Williams") as a party to the proceedings in the state court, but incorrectly states that Mr. Williams is "not legal entity (sic) to this proceeding." Pet. at ii. The Petitioner further incorrectly states that Mr. Williams was illegally appointed by the Register of Wills for New Castle County, Delaware. *Id.*

The Petitioner is mistaken. This suit was filed by Supportive Care Services, Inc. ("SCS") which, at the time, was the court-appointed guardian of the property of Mrs. Aline G. Brugmann ("Mrs. Brugmann"). The suit sought the imposition of a constructive trust over certain real property the Petitioner and her deceased husband (together the "Spanagels") received from Mrs. Brugmann. Mrs. Brugmann died during the pendency of the proceedings in the trial court, and Mr. Williams was appointed administrator of Mrs. Brugmann's estate with the will annexed by the Register of Wills for New Castle County, Delaware. (B-101).[1]

At no time did the Petitioner nor anyone else challenge Mr. Williams' appointment.

The plaintiff in the trial court moved for the substitution of Mr. Williams as the real party-in-interest. (B-97). Although the motion was not formally granted by the

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[1] "B-___" refers to the Appendix to Appellees' Answering Brief which is docket number 56 in the docket of the Supreme Court of the State of Delaware.

PARTIES TO THE PROCEEDINGS AND STATEMENT PURSUANT TO RULE 29.6 – Continued

trial judge, the parties amended the caption to reflect the substitution. On appeal to the Supreme Court of Delaware, the Petitioner referred to SCS as the appellee, but the Supreme Court of Delaware changed the caption to reflect Mr. Williams as the correct appellee. In this Petition, Mr. Williams is the correct Respondent.

To the extent the Court considers Respondent SCS to be a party to this Petition, SCS is a privately-held Delaware corporation. There is no parent or publicly-held company owning 10% or more of the corporation's stock.

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STATEMENT OF THE CASE

Respondents disagree with many of the "facts" set forth by the Petitioner in her Petition. The correct record of this case is set forth below.

A. *General Background.*

The Spanagels, who had some association with Mrs. Brugmann through Mr. Spanagel's mother, assisted Mrs. Brugmann with her financial affairs after her husband's death in 1986. (B-207-209). Shortly after her husband's death, Mrs. Brugmann granted a power of attorney to Mr. Spanagel. (B-1;208).

On June 18, 1987, Mrs. Brugmann deeded her home to the defendants. (B-11). The "purchase" price was $125,000.00. (*Id.*). The defendants paid her $50,000.00 and gave her an unsecured promissory note[2] for the remainder. (B-151A-B). That note was never paid, although Mr. Spanagel's testimony regarding the note was, at best, inconsistent. *See* 9/14/00 Op. at 6, 8, n.14.[3]

The Spanagels continued to manage Mrs. Brugmann's affairs until 1990 when Mrs. Brugmann temporarily relieved Mr. Spanagel as her attorney-in-fact and appointed Respondent SCS, a private guardianship agency, in his place. (B-210). However, Mr. Spanagel was re-appointed as Mrs. Brugmann's attorney-in-fact only a few months later. (B-211-212).

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[2] The note itself is not in the record.

[3] The September 14, 2000 Memorandum Opinion of the trial court (Doc. 5) is hereinafter referred to as "9/14/00 Op."

The Spanagels continued to handle Mrs. Brugmann's affairs for several more years. The Spanagels placed Mrs. Brugmann in the Forwood Manor Nursing Home in April of 1991. The nursing home instituted guardianship proceedings in 1995 because the Spanagels stopped paying her nursing care bills. That petition was opposed by the Spanagels and a hearing was held on June 30, 1995 at which the Spanagels attended and testified. (B-20). At the conclusion of the hearing, the court appointed SCS as the guardian of the person and property of Mrs. Brugmann and directed SCS to obtain an accounting of Mrs. Brugmann's finances from the Spanagels. (B-21-22).

SCS was the original plaintiff of this suit which was filed on August 18, 1995. (B-27). The complaint filed by SCS demanded that the Spanagels provide an accounting of their handling of Mrs. Brugmann's affairs, and sought the imposition of a constructive trust on the property which Mrs. Brugmann had transferred to the Spanagels. (*Id.*). Mrs. Brugmann died March 12, 1996. (B-100). On March 7, 1997 John H. Williams, Jr., Esquire, was appointed administrator of Mrs. Brugmann's estate with the will annexed. (B-101). On April 16, 1997, SCS moved to substitute Mr. Williams as the plaintiff in the suit.[4] (B-97).

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[4] It appears from the trial court's docket that the motion for substitution was never actually signed by the trial judge. However, it is beyond dispute that the parties litigated the remainder of the case under that supposition. The parties and the trial court used Mr. Williams' name thereafter in the caption of the case.

B. ***Course of the Proceedings.***

When it filed the suit originally, SCS filed a praecipe directing service to be made on the defendants by serving the Secretary of State of Delaware pursuant to DEL. CODE ANN. tit. 10, § 3104 (Rev. 1974)(the "long arm statute"). (B-32). Service on the Secretary was accomplished on August 30, 1995 and returned on September 12, 1995. (B-33; A-17).[5]

On September 15, 1995, SCS mailed a letter in compliance with the long arm statute to the Spanagels by registered mail and enclosed a copy of the summons and complaint. (B-45-46). The letters were addressed to 5132 Paw Paw Lane, Cambridge MD 21613. (B-47). The letters were returned to SCS's attorney marked "unclaimed." (*Id.*).

On October 17, 1995, SCS filed a proof of non-receipt of notice by the Spanagels. (B-43). On October 24, 1995, SCS filed a motion for default judgment. (B-55). As a result of that motion, on November 15, 1995, the trial court entered an order to show cause directed to the Spanagels, requiring them to file an answer to the complaint on or before December 15, 1995. (B-61). The order was sent to the same Paw Paw Lane address that SCS had been using for its letters and notices to the Spanagels. (*Id.*).

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[5] "A-___" refers to the Appendix to Appellant's Opening Brief which is docket number 47 on the docket of the Supreme Court of the State of Delaware.

The Spanagels did not file an answer, but they did send a letter to the trial court, dated December 14, 1995, complaining that they did not have a copy of the complaint.[6] (B-60). On December 21, 1995, SCS's counsel sent a detailed letter to the trial judge explaining the various efforts he had undertaken to ensure the Spanagels had received the complaint. (B-62A-D). The letter detailed the following:

- Counsel mailed a copy of the complaint to the Spanagels by regular first class mail (that is, in addition to the long arm service required by the statute) which was not returned. Let. ¶2

- A further copy was provided to an attorney who was representing the Spanagels at the time. ¶4.[7]

- That attorney contacted SCS's attorney and requested that the complaint be faxed directly to the Spanagels and gave a fax number for that purpose. The fax went out on August 24, 1995. ¶6. (B-48-49).

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[6] The fact that the Spanagels obviously received the trial court's order to show cause where it was sent to Paw Paw *Lane* casts doubt as to the Spanagels' statements that they had not received previous correspondence from the plaintiff because it was sent to Paw Paw *Lane* instead of Paw Paw *Point*.

[7] The Spanagels have contended that this particular attorney was not their lawyer. Although the attorney never entered his appearance in this case, he did represent the Spanagels in a contemporaneous case pending in another state trial court. (B-23-26). Also, the same lawyer represented the Spanagels in connection with their attempts to sell the property which led to the filing of this suit. (B-36A, 37, 37A-40, 51-53).

- The Spanagels received notice of a *lis pendens* filed against the property by SCS by letter dated August 25, 1995. ¶7.
- Copies of the default judgment motion were sent to the Spanagels and again, the mailing was not returned. ¶9.
- Other letters to the trial court were copied directly to the Spanagels and not returned. ¶¶10, 11.
- The Spanagels' letter in response to the order to show cause clearly proved that they had received notice of the proceedings. ¶12.

Although SCS sought immediate judgment in its December 21 letter, the trial judge decided to give the Spanagels another chance. On December 22, 1995, the court entered another order to show cause directing the Spanagels to file an answer on or before January 19, 1996. (B-62). The Spanagels responded with a letter dated January 17, 1996 in which they continued to maintain that they never received the complaint. (B-64).

On March 1, 1996, SCS sent a letter to the trial court again asking for a default judgment to be entered. (B-69). The letter informed the trial court that SCS had hired a process server to personally deliver the complaint to the Spanagels. (*Id.*). The process server's affidavit indicated that service was made on February 12, 1996 and that the person receiving service admitted to being Rose Marie Spanagel, "however, after serving document/s the subject was not willingly accepting of document/s." (B-68).

On March 4, 1996, the trial court entered default judgment against the defendants. (B-71). On that same day, the Spanagels, through new counsel, filed an answer.

(B-72). In their answer, the Spanagels denied the substantive allegations of the complaint, but they raised no affirmative defenses, and no defenses based on lack of personal jurisdiction or insufficiency of service of process. (*Id.*).

On May 1, 1996, the Spanagels filed a motion to set aside the default judgment. (B-82-84). In support of that motion, the Spanagels argued *only* that the answer was timely filed. (*Id.*). The Spanagels again failed to allege lack of personal jurisdiction or insufficiency of service or process. In fact, the motion to set aside default judgment actually conceded the sufficiency of service. (B-83, ¶1). SCS filed a response to the motion (B-90) and on May 14, 1996, the trial court issued a short letter order finding no basis to set aside the default judgment. (B-96).

After he replaced SCS as the plaintiff, Respondent Williams spent the next two years trying to resolve the case. At one point, in August of 1998, the parties actually executed a settlement agreement, but the Spanagels later repudiated the agreement claiming that Mr. Spanagel did not understand it. (B-112).

A hearing was scheduled for March 26, 1999. (B-113). The defendants attended the hearing, represented by counsel.[8] The trial court directed counsel to submit letter

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[8] The Spanagels went through several attorneys in this case. The attorney who filed the answer and original motion to set aside default judgment was permitted to withdraw on September 15, 1997. (B-104; A-4). New attorneys represented the Spanagels for a while, but withdrew after the settlement went awry in September of 1998. (B-109). Another lawyer entered his appearance and represented the Spanagels during the first part

memoranda as to the effect of the default judgment on the issues pending. The court also heard testimony from the Respondents' witnesses as well as from an attorney who was called by the Spanagels as a fact witness on the issue of the transfer of the property.

Per the trial court's instructions, Respondents submitted a memorandum on the effect of the default judgment on the Spanagels' liability. (B-152). The Spanagels chose not to file a memorandum of their own. On April 9, 1999, the trial judge issued an order granting the specific equitable relief prayed for in the complaint and ordered the Spanagels to execute a corrective deed transferring the property to the Respondents. (B-158).

The Spanagels chose to disregard the trial court's April 9 order, which led the Respondents to file a motion for performance by substitute under Court of Chancery Rule 70(a) on April 22, 1999. (B-159). The Spanagels did not contest the motion, and it was granted by the trial court on April 27, 1999. (B-164).[9]

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of the inquisition hearing. He was replaced by another lawyer in July of 1999. (B-166). That lawyer represented the Spanagels through the second part of the inquisition hearing and through the post-trial briefing, but he withdrew after the trial court issued its opinion in September of 2000. (B-270). The Spanagels hired a new attorney to handle the appeal to the Delaware Supreme Court, and yet another attorney to file the reply brief in that appeal.

[9] The Register in Chancery deeded the property to Respondent Williams. Eventually, Williams sold the property to third parties. (B-264). The sale was approved and confirmed by the trial court. (B-260; 268).

On September 13, 1999, the Spanagels filed another motion to vacate the default judgment. (B-168). For the first time, the Spanagels contended that the court had not acquired personal jurisdiction over their persons and that service of process was insufficient. The Respondents responded to the motion (B-177) and on September 21, 1999, the trial court denied the motion. (B-198; A-242). The inquisition hearing re-convened on December 20, 1999 at which time the Spanagels were afforded the opportunity to present their case.

After post-hearing briefing, the trial court issued its memorandum opinion on September 14, 2000. In its opinion, the trial court granted most of the substantive relief sought by the Respondents. A form of order implementing the court's findings was signed by the trial court on October 2, 2000. (B-269).

The Spanagels filed an appeal to the Supreme Court of Delaware on October 31, 2000. On November 7, 2001, the Supreme Court of Delaware issued an order affirming the trial court's decision for the reasons stated by the trial court in its several opinions and orders. (A-20). The Petitioner filed a motion for rehearing by the court *en banc*, which was similarly denied by order dated December 7, 2001. (A-13). The Petitioner filed this Petition with the Court on March 7, 2002.

C. *Summary of the Evidence.*

Mr. Thomas Posatko testified on behalf of the Respondents. He is the President of SCS. (B-122). Mr. Posatko testified that Forwood Manor Nursing Home

instituted guardianship proceedings because Mrs. Brugmann's nursing home bill was substantially in arrears and arrangements needed to be made for her care. (B-136). Upon SCS's appointment as guardian of Mrs. Brugmann, the trial court directed the Spanagels to provide information and an accounting to the SCS, but the Spanagels did not do so. (B-125, 128).

Mr. Posatko learned that the Spanagels had submitted a financial statement to the nursing home indicating that Mrs. Brugmann had assets totaling $152,000.00 in April of 1991. (B-126). He also learned that the Spanagels had received Mrs. Brugmann's home for what appeared to be a grossly inadequate price. (B-131-32). As guardian, Mr. Posatko objected to a pending sale of the property by the Spanagels, but then reached an agreement under which the sale proceeds would be held in escrow. (B-133). Despite their agreement, the Spanagels failed to attend the settlement, and the property was not sold. (B-134).

Following Mrs. Brugmann's death, Mr. Posatko filed his final accounting and turned matters over to Mr. Williams. (B-135). There were outstanding bills to the nursing home and a state health care facility which he could not pay with Mrs. Brugmann's accumulated income. (B-136).

Mr. Williams also testified. He was appointed to handle Mrs. Brugmann's estate in March of 1997. (B-138). The Register of Wills asked for his assistance in handling the estate in light of the pending litigation. (B-139). Like Mr. Posatko, he never received any accounting or other information from the Spanagels. (B-141). He testified that the Spanagels paid Mrs. Brugmann $50,000.00 in cash for a

home which was worth approximately $125,000.00. (B-142). Mr. Williams stated that the Spanagels provided Mrs. Brugmann with a purchase money mortgage for $75,000.00. (*Id.*).[10]

The Spanagels' former attorney testified on their behalf. He handled the transaction in which the Spanagels acquired the property from Mrs. Brugmann. (B-145-49). He testified that Mrs. Brugmann understood what a purchase money mortgage was, and told him that she wanted to transfer the property to the Spanagels so she could pass away peacefully at home. (B-148). On cross-examination, the lawyer conceded that Mrs. Brugmann did not have separate legal representation in the transaction. (B-150-51).

Mr. Spanagel testified that he and his wife cared for Mrs. Brugmann completely after her husband's death. (B-208). He said that all she could do was watch television and dress herself. (B-215). Mrs. Brugmann appointed him as her attorney-in-fact on June 6, 1986. (B-208-09). Mr. Spanagel testified that Mrs. Brugmann deeded her property to him and his wife. (B-217-18). He said he made a "partial payment" of $50,000.00. (B-218). He thought the deal was that he and his wife would "work off" the remaining $75,000.00 purchase price by providing care to Mrs. Brugmann. (B-218-19). He denied that a promissory note was tendered for the balance. (B-219).

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[10] Mr. Williams' recollection was mistaken on this point. The Spanagels did not give Mrs. Brugmann a purchase money mortgage. The record indicates that they signed an unsecured $75,000.00 promissory note in her favor, although Mr. Spanagel denied even doing that. (B-219).

Despite his denial that a promissory note existed, Mr. Spanagel attempted to introduce into evidence a note forgiveness agreement allegedly signed by Mrs. Brugmann. (B-10). The Spanagels could not verify that the agreement was actually signed by Mrs. Brugmann, accordingly, the Court ruled that it was inadmissible as evidence. (B-226).

Mr. Spanagel testified that in April of 1991, he completed the application to move Mrs. Brugmann into the nursing home. (B-230). He admitted that he intentionally misrepresented the amount of Mrs. Brugmann's assets on the application to qualify her for admission. (*Id.*). In order to claim that Mrs. Brugmann had assets of at least $150,000.00, he indicated on the application that she had "notes due" to her of $71,000.00. (B-232). He also intentionally misrepresented her monthly income. (B-234).

On cross-examination, Mr. Spanagel admitted that following the death of her husband, Mrs. Brugmann had approximately $30,000.00 in various bank accounts, a home worth approximately $120,000.00, and insurance proceeds of about $16,000.00. (B-236-38). He was unable to account for his handling of Mrs. Brugmann's affairs during the time period of 1986 through 1990. (B-240). He claimed that a third person had taken Mrs. Brugmann's financial documents, but he admitted that he had done nothing to retrieve them other than writing her a letter. (B-241).

Mr. Spanagel admitted that he used Mrs. Brugmann's funds to pay the utilities and expenses on the property. (B-256). This was inconsistent with his position that he and his wife obtained title to the property in 1987, and

that he was entitled to retain all rental income from the property. He conceded that he was essentially holding the property for her in case she needed it to pay her expenses. (B-256-57). Mr. Spanagel also stated that he had made two payments on the promissory note to Mrs. Brugmann in 1990. (B-258). He did it because she was "upset about money" and he wanted to "quiet her down." (*Id.*).

D. *The Trial Court's Decision on the Merits.*

In its opinion, the trial court granted most of the substantive relief sought by the plaintiff. Most importantly, it extended the constructive trust on the property to the rents chargeable to the Spanagels during the time in which they held legal title. The trial court further denied or discounted many of the set-offs claimed by the Spanagels during their damages presentation.

Having heard the parties' testimony, the trial judge came to the following factual conclusions:

- Mrs. Brugmann was an elderly disabled person who needed assistance in handling her personal and financial affairs. 9/14/00 Op. at 4.
- On June 6, 1986 Mrs. Brugmann appointed Mr. Spanagel as her attorney-in-fact and for the next nine years Mr. Spanagel handled Mrs. Brugmann's financial affairs. *Id.*
- The defendants were unable to account for Mrs. Brugmann's funds for four years between 1986 and 1990, although during the same time period they had no trouble producing receipts that they could claim as expenses. *Id.* at 5.

- Mrs. Brugmann was not represented by counsel when she conveyed her property to the defendants. *Id.*
- Mr. Spanagel's testimony was inconsistent on a number of key issues. *Id.* at 6, and n.12.
- Mr. Spanagel's testimony in general lacked credibility. *Id.* at 8, n. 14.
- The Spaangels made no effort to account for the rents they collected for the property. *Id.* at 8.
- Mr. Spanagel admitted that he was "holding on to that house . . . in case Mrs. Brugmann needed it back or he needed to sell it to pay expenses." *Id.* at 8-9.
- The Spanagels failed to comply with a court order to provide an accounting to SCS. *Id.* at 10.
- "In this case there is no question that the Spanagels violated their fiduciary duty to Mrs. Brugmann in handling her financial affairs, and that they conducted their defense of this litigation in a manner that was at best highly irresponsible." *Id.* at 23.

REASONS FOR DENYING THE WRIT

The Petitioner has no compelling reason for review by this Court. This case is simply an application of well-established rules of civil procedure. The trial court granted a default judgment against the Petitioner and her late husband after they failed to obey multiple orders of the court to file an answer to the Respondents' complaint.

A motion to vacate the default was denied by the trial court shortly after the judgment was entered. Thereafter, the parties engaged in extended and protracted post-judgment proceedings over the course of several years.

The Petitioner belatedly filed a second motion to vacate and argued that she and her deceased husband had not been properly served with process under Delaware's long arm statute, DEL. CODE ANN. tit. 10, § 3104 (Rev. 1974), because the registered mail letter required under the statute was sent to the wrong address. The trial court held that the Petitioner had failed to persuade on the merits of the argument. Moreover, the court held that the Petitioner (i) had been personally served with the complaint; (ii) had appeared and participated in the damages inquisition; (iii) had previously conceded sufficiency of service of process; and (iv) had waived the right to contest sufficiency of service or personal jurisdiction based on having participated in four years of litigation without raising the issues.

The Supreme Court of Delaware reviewed the trial court's ruling on these and other issues and affirmed for the reasons and bases stated by the trial court. The Supreme Court of Delaware did not decide an important issue of federal law. Sup. Ct. R. 10. The Petitioner has alleged only a misapplication of the rules of civil procedure, a state law issue. The trial court gave the Petitioner ample opportunity to comply with its orders and file an answer to the complaint prior to granting a default judgment. The court also ruled on two separate motions to vacate filed by the Petitioner and her late husband and found them meritless. The trial court's rulings were reviewed by the Supreme Court of Delaware and upheld.

Review by this Court is not warranted. The Petitioner has received all of the process that is due to her.

I.

NEITHER THE RECORD NOR THE DECISION BELOW RAISE THE QUESTION PRESENTED BY THE PETITION

The Respondents strongly contest the Petitioner's assertion that their counsel committed a fraud upon the Court or committed perjury. The Petition is rife with misstatements and misrepresentations of the record. The Petitioner contends that the Respondents' counsel admitted to fraud by conceding in his answering brief to the Delaware Supreme Court that as a technical matter, service had not been effectuated under Delaware's long arm statute. This concession was made for the sole reason that Delaware's long arm statute has been construed to require a plaintiff serving process to send a *second* registered letter to the defendant's last known address where the first is returned unclaimed. *See, e.g., Greenly v. Davis,* 486 A.2d 669, 671 (Del. 1984).

In this case, the Respondent failed to send the second registered letter, an error that was not recognized by Respondents' counsel until the Petitioner appealed to the Delaware Supreme Court. However, the Respondents' attorney *never* represented to the trial court that the second letter was sent when in fact it was not. Rather, the Respondent argued service was proper. This was a legal conclusion rather than a factual representation, and was founded on a mountain of other efforts, amply supported by the record, the Respondents' attorney made to ensure

the Spanagels had notice of the complaint. In addition, the fact that service was not technically made under the long arm statute became irrelevant because the Spanagels did not properly raise the issue before the trial court and therefore were deemed to have waived it.

In the end, it was apparent to the trial court that the Spanagels were more concerned with gamesmanship and evading service than with addressing the dispute on its merits. The Spanagels deliberately ignored court orders to respond to the complaint. Although they argued they never received the complaint, that argument was incredulous given the record. The Spanagels have no one to blame but themselves for the turn of events taken in the trial court. Even if one believes that they did not receive a copy of the complaint, instead of obsessing over minutiae, the Spanagels could have obtained a copy of the complaint from numerous sources, including their own lawyer, and the court itself. If they believed that service of process was insufficient the Spanagels could have raised the issue as an affirmative defense or, instead of filing an answer to the complaint, they could have filed a motion to dismiss pursuant to Court of Chancery Rule 12(b)(2) and (5).[11] The Spanagels failed to avail themselves of these procedural avenues, instead choosing to disregard the court's orders.

Thus, the issue before the trial court and the Delaware Supreme Court had nothing to do with misguided allegations of fraud and perjury. The issue had to do with

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[11] The Rules of the Court of Chancery of the State of Delaware are substantially similar to the Federal Rules of Civil Procedure for matters relevant to this Petition.

whether the trial court properly entered, and refused to vacate, a default judgment against the Spanagels where they deliberately chose to ignore two orders of the trial court to file a responsive pleading.

II.

THE SPANAGELS' DUE PROCESS RIGHTS HAVE NOT BEEN VIOLATED

The Petitioner believes her civil rights have been violated by the Respondents and the court system of the State of Delaware. Specifically, she claims she did not receive proper notice and an opportunity to be heard before the default judgment was entered against her and her late husband. As the trial court and the Supreme Court of Delaware found, this argument is meritless.

First, the record before the trial court was that the Respondents' counsel undertook numerous efforts to provide the Spanagels with the complaint. The Spanagels resisted these efforts and undertook a campaign of purposeful passivity in responding to the suit. It was simply not credible that the Spanagels did not have a copy of the complaint in the face of the efforts of Respondents' counsel. The injustices claimed by the Petitioner are chimerical. The real injustice is that the Respondents' attorney tried so arduously to comply with the duties placed on him by the rules of procedure and due process, and yet, he must listen to the Petitioner besmirch his professional character and accuse him of trying to pull the proverbial "fast one." Nothing could be further from the truth. Respondents' counsel did everything to get beyond the service issue so that the case could be heard on its merits. He wanted to move the case forward because it was

meritorious. The Spanagels resisted at every turn, a telling sign that their defense (as the trial court ultimately found) was wanting.

But, even if one believes that the Spanagels did not actually receive a copy of the complaint before they were personally served in February, 1996, there is no doubt in the record that the Spanagels, at the very least, knew that a case was pending against them and had the opportunity to obtain a copy of the complaint from a wide variety of sources. The trial court did not grant the motion for default judgment in a knee-jerk fashion. It twice ordered the Spanagels through rules to show cause to plead in response. The Spanagels could have done so, they simply chose not to.

Finally, the Petitioner does not understand that her right to due process, as it is implicated in this case, is not without limits. The rules of procedure in the trial court, as in the federal courts, clearly provide that defenses based on lack of personal jurisdiction and insufficiency of service of process are waived if not raised properly. Fed. R. Civ. P. 12(h); Ct. Ch. R. 12(h). "Where a defendant leads a plaintiff to believe that service is adequate and that no such defense will be interposed . . . courts have not hesitated to conclude the defense has been waived." *Trustees of Central Laborers' Welfare Fund v. Lowery*, 924 F.2d 731, 733 (7th Cir. 1991). In this case, although the Spanagels informally complained about service in letters to the trial court, they utterly failed to raise the issue either by way of pleading or by motion. When they attempted to vacate the default judgment the first time, they did not even allege that service was improper. They conceded its sufficiency and argued the answer they

belatedly filed was timely. Thereafter, Spanagels participated actively in post-judgment proceedings for more than three years before raising the issue in their second motion to vacate the default judgment. Under these circumstances, the trial court was absolutely correct in finding that the Spanagels waived the right to contest service or process, and the Supreme Court of Delaware was correct in affirming that ruling.

CONCLUSION

This case does not merit any further review by this Court. For the foregoing reasons, the Court should deny this Petition for Writ of Certiorari.

Respectfully submitted,

David J. Ferry, Jr.
Robert K. Pearce
Ferry, Joseph & Pearce, P.A.
824 Market Street, Suite 904
P.O. Box 1351
Wilmington, DE 19899-1351
(302) 575-1555
Attorneys for Respondents

Dated: April 17, 2002

No. 01 1379

Supreme Court, U.S.
FILED
MAY 15 2002
OFFICE OF THE CLERK

In The Supreme Court of the United States

ROSE MARIE S. SPANAGEL,
individually and as personal representative
of the Estate of Robert J. Spanagel,

Petitioners,

v.

SUPPORTIVE CARE SERVICE, INC.,

Respondent.

On Petition for Writ of Certiorari
to the Delaware Supreme Court

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Rose Marie S. Spanagel
5132 Paw Paw Point
Cambridge, MD 21613
(410) 228-9009

Pro se

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

12 pg

QUESTION PRESENTED FOR REVIEW

The question remains as outlined in Petitioners Brief. The record supports, undoubtedly, that the Respondent's Attorney, David J. Ferry, Jr., made a sworn affidavit September 16, 1999 that was not truthful to counteract overwhelming evidence in the record validating his deception and fraud on the Court. Even though he recanted his sworn affidavit, it was too late to prevent all of the additional inordinate Rule violations committed by the rest of the Court. By ignoring the Rules, followed with a pattern of deception, the Courts failure to Rule on pivotal points of law and wrongdoing, has transformed a civil case filed August 1995, for an accounting, into a criminal matter.

"Did the Supreme Court of the State of Delaware violate Petitioners' 14th Amendment Constitutional rights and commit reversible error when it affirmed the Delaware Court of Chancery's entry of a default judgment against Petitioner, when Respondent's attorney later admits that he committed a fraud on the court when he certified that he had personally served Petitioners a copy of the Complaint according to Court rules, and now admits to perjury?"

PARTIES TO THE PROCEEDINGS

The Spanagels filed an appeal *pro se,* October 31, 2000, S.C.No.523, 2000; however, they could not continue. January 2001, Mr. Spanagel was hospitalized, and died February 2, 2001. Petitioners were blessed to hire a truly ethical professional attorney, Caroline Patricia Ayres, to take over at this difficult time. However, her service was limited because the events of September 11th affected her family, and Petitioners required another counsel to take over.

David Ferry freely and openly disregarded Court rules, as though they were never applicable to him. The irony is that Mr. Ferry intentionally ignored the most important rules; those addressing service and written requests for a hearing. Not only was the Complaint, The Motion For Default Judgment, (actually an Order To Show Cause Ferry submitted by mistake to beat Petitioners Answer to the Complaint. Mr. Ferry knew on March 1, 1996 from Phillips that his Answer would be filed Monday, March 4 on behalf of the Petitioners) and the Motion For Substitution Of Parties filed by Ferry, were never served upon Defendants according to Court of Chancery Rule 25(a). This rule specifically provides in pertinent part that: "[T]he Court may order substitution of the proper parties.....The motion... together with the notice of hearing , shall be served on the parties as provided in Rule 5..."

In this case, the Court is the only entity that can permit a substitution of parties. No such order was ever entered in the present case. Furthermore, in complete disregard for the Rules,

Ferry never requested a hearing date on his request for substitution of parties, or served such a request upon Petitioners. In fact, no hearing date was requested for the Order To Show Cause, interpreted to be a Default Judgment, and signed by Vice Chancellor Jacobs Monday morning, March 4, 1996, less than a four hour window from receipt at the court.

Failure to follow substitution of party rules must lead to dismissal of Respondent's claims, as there is no longer a party in interest appointed by the Court to pursue these claims. See Tiffany v. O'Toole Realty Co., Del. Super., 153 A.2d 195 (1959). In Tiffany, the husband's claims were dismissed because he neglected to follow court rules dealing with substitution of parties. The Court below erred in not so dismissing this case.

The Motion for Substitution, Docket 23 (received by court 4-16-97, 3:33 PM) was filed out of time, more than one year from the date of death (3-12-96) instead of 90 days required by Rule 25. It was no mistake the Motion was never signed, as it would be illegal, and no hearing was offered. Two people have been constant in this case: David J. Ferry, Jr., Attorney for Respondent and Vice Chancellor Jack B. Jacobs. Richard S. Phillips, was engaged March 1, 1996, Attorney for Petitioners. Joseph F. Flickinger III, Register of Wills, gave John H. Williams, Jr., March 7, 1997 Letters of Ancilliary Administration With The Will Annexed. Almost one year earlier, Walter P. McEvilly, Jr., Esquire, sent a photocopy of Mrs. Brugmann's Will with an undated Codicil, and various other documents with conflicting dates, by letter of May 16, 1996 to Mr. Flickinger. The estate was opened with an

unproved and photocopied Will, an undated Codicil, and no Certified Copy of the Death Certificate. March 13, 1997, Joseph F. Flickinger III, withdrew Letters of Ancilliary Administration With The Will Annexed, and issued Letters of Administration. XIX. Probate Procedures, Rule 188 was violated when Joseph F. Flickinger III appointed John H. Williams, Jr. Rule 189 [No petition for Letters Testamentary or Letters of Administration with will Annexed shall be filed with the Register of Wills until the will has been proved] Mrs. Brugmann's Will was never proved when Mr. Williams appointed. Also, Rules 191, 194, 195, 197, 198 and 202 were subsequently violated.

The Respondent is mistaken when he stated, "Mr. Williams appointment was never challenged." Mrs. Brugmann's Will specifically stated Robert J. Spanagel as her Executor, and if unwilling or unable to serve, her personal attorney, Darrell J. Baker was to serve in his place.

Two notes in the file read: "This is one of V. C. Jacobs cases. Do Not Docket". One note was signed by Jean, Vice Chancellor Jacobs' secretary. Besides letters and faxes submitted directly to V. C. Jacobs during periods when Petitioners were *pro se* that were not docketed, letters and faxes submitted by their counsel also was not docketed; regardless of the fact, on two occasions, the very same method of presentation was also used by Respondent. Respondent was successful having his material docketed, while Petitioners were not, thereby the record was not complete in the trial court.

This bad faith fraudulent litigation, coupled with the destruction of Petitioners good names and life, ultimately attacking reputable lawyers and their firm; namely Heiman & Aber and Darrell J. Baker by Respondents counsel to bolster their weak claim, so they could pilfer our house and personal property, is criminal.

Neither the 14th Amendment of the U. S. Constitution or the Delaware Constitution permits legal action without proper notice, and an opportunity to be heard. In failing to properly serve the Spanagels with the Complaint, the Motion For Default Judgment (actually not a Motion, rather just a document labeled "Order to Show Cause" interpreted as a Default Judgment by the trial judge) and Motion For Substitution Of Parties, the Spanagels were denied their due process rights, as well as an opportunity to be heard. Also, Ferry's deliberate intentional disregard for Rule 25, violates not only the 14th Amendment to the U. S. Constitution, but also the Delaware Constitution, Article IV, Section 23, regarding the proper procedure for survival of actions after death.

STATEMENT OF THE CASE

Statement of the case remains the same as outlined in Petitioner's Brief. Because of the numerous misstatements and events reported out of context in the Respondent's Brief in Opposition, the following corrections are necessary due to the chronic effort to discredit Petitioners; rather than report the facts:

Page 1 Respondent misleads the court implying the Spanagels had some association with Mrs. Brugmann, as if we just came into her life since her husband died in 1986. Spanagels relationship was life long starting in 1920, and referred to as Aunt Aline.

Page 2 Respondent again misleads by stating: [The Spanagels placed Mrs. Brugmann in the Forwood Manor Nursing Home in April of 1991] when the fact is she was not placed, she signed herself into a luxury retirement apartment. The facility, Forum Retirement Communities had very limited nursing beds, and no one gets placed except a resident. Because the beds were very limited and reserved for patients paying around $5,000, there were problems getting a Medicare/Medicaid bed. Petitioner believes Executive Director, Russell DiGilio wanted Mrs. Spanagel to leave his office and get a lawyer at their first meeting March 13, 1995, for this reason.

Page 3 Here Respondent wants you to believe SCS also sent letters and notices to the Spanagels at Paw Paw Lane (invalid address in Cambridge, MD) Fact is SCS never sent the Spanagels a notice. There was no reason to, as they hired Ferry.

July 27, 1995, SCS mailed one letter to the Spanagels and got the address correct; something the Court and Respondent never did until the year after complaint filed.

Page 4 Respondent claims he mailed a five page complaint, plus a summons (not even issued yet) and cover letter first class (1oz. & under) in an envelope with 32 cents postage. This is impossible, and the record supports it. Again, he misleads the Court alleging Darrell J. Baker represented us in this case. He was specifically told Mr. Baker would not take on additional representation due to potential conflict, as he was Mrs. Brugmann's attorney. His help with Superior Court Case 95-05-102 was a compassionate courtesy due to open heart surgery in N.Y., and Mr. Ferry knew this, but, he continues to mislead the Court.

Page 5 Misrepresentations throughout the page, especially the part where he claims he hired a process server and the Spanagels were served. A part-time security guard was employed, with no authority from the Courts, and 179 days after the complaint was filed, delivered copies of the complaint only to Rose Marie Spanagel. The affidavit he filed says so, therefore, the trial judge and Supreme Court stated in their opinions, "the Spanagels were served". One misrepresentation after another. The chronic pattern of ignoring the Rules, and claiming they were followed is endless.

Page 6 Again, to mislead the Court, Ferry writes four times "the Spanagels" instead of Spanagels Attorney, Richard S. Phillips, so it reads out of context. The accounting was delivered to the Court August 20, 1998 for a hearing. Vice Chancellor Jacobs did not permit the accounting or the Spanagels in the Court. John Williams removed personal

records from the accounting boxes, and we were told we should be glad the Chancellor did not want to see us, as he puts people in jail who mess with deeds. Not one lawyer glanced at the accounting reformatted for the hearing.

Page 7 Four witnesses testified for the Respondents, and Darrell J. Baker, was called by Petitioners lawyer, Larry Sullivan. Again, the Spanagels is used instead of The Spanagels lawyer, Larry Sullivan who failed to file a memorandum, as he was told not to.

Page 8 Here again, the Spanagels should read, the Spanagels lawyer, Douglas A. Shachtman so it doesn't read out of context. **Mrs. Spanagel** has never testified and it took almost 5 years for Mr. Spanagel to testify the **first time** December 20, 1999.

Page 9 Here Ferry contradicts himself to make it look as though the Spanagels disobeyed an order. Not True. On Page 2, 1st Paragraph, last sentence Mr. Ferry has it right. To say Posatko never received any information....Misleading again. On July 27, 1995 he wrote one letter, and never specified any time frame, then 20 days later, files suit August 18, 1995.

Page 10 Completely out of context. Baker was Brugmann's attorney, and never represented Spanagel in this case. Ferry knows this, yet, he continues to deceive.

Page 11 Again, by writing the Spanagels here instead of **Mr. Spanagel**, misleads.

Page 12 Here the Court heard testimony the Brugmann/Spanagel agreement was cleared up with the last check dated 4-2-90, No. 2685 for $4,500; and they had a copy of the canceled check. It made no difference, the case crawled on, rather than the Court admit to a mistake.

Page 13 Mrs. Brugmann had counsel at the sale of her house and the Court knew this.

Page 14 More misstatements and misrepresentations.

Page 15 By denying Petitioners due process, there is no problem for the Court. Only one mistake is in Petition. Page 10, a typo error. SCS letter of 7-27-95 was listed as 7-25-95.

Page 16, 17, 18 and 19 1st Paragraph "the Spanagels had notice... Phillips and our next attorney, Lawrence Sullivan both told us the complaint was not filed properly. After they talked with Ferry, the story changed. They were told to back-off. This was a simple case for accounting, and it was available from the start. No Petitioner should have to hire four law firms, five attorneys in the lower court, and then two more law firms in an attempt for justice in the Delaware Supreme Court. The Courts "Gamesmanship" from the beginning to the end in Delaware's system of justice was approved by the very people we expect justice from. Clearly, this issue was raised in our first Pleading, and medical incompetence documented as well. If the court disagrees, an opinion should be rendered on the first two Pleadings made by Petitioners. There simply is no right way to do a wrong thing.

CONCLUSION

The Spanagels pray that this Honorable Court not turn its back to the intentional wrongdoing committed on them and the Court below. To do otherwise, would mean that it is impossible for small town people like the Spanagels to receive the protections of Constitutional laws and rules that were drafted to prevent the very fraud that Mr. Ferry was freely permitted to accomplish at the Court below. Mr. Ferry's misrepresentations to the Court have cost the Spanagels everything, including the life of Mr. Spanagel, who perished amidst the stress of a Court system that would rather listen to false statements than true documented facts. Ferry ironically argues that the Spanagels did not comply with the technical rules in objecting to service. At the same time, when his back was up against the wall, Ferry finally admits the truth that he did not follow the technical rules of service, either. If Ferry's argument stands, than justice falls in this case and every case where success is obtained through misrepresentation and deceit.

Respectfully submitted,

Rose Marie S. Spanagel
5132 Paw Paw Point
Cambridge, MD 21613
(410) 228-9009